Family Law Taskforce

RECOMMENDATIONS

March 2021

COURT OF APPEALS OF INDIANA

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JUDGE

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Re: Family Law Taskforce – Final Report

Dear Chief Justice Rush and Justices,

The Indiana Family Law Taskforce (FLT) is pleased to present our final report with findings and recommendations for innovations for family law proceedings. We were charged with "consider[ing] recommendations on more efficient handling of domestic relations matters created by the National Center for State Courts, the Institute for the Advancement of the American Legal System, the National Council of Juvenile and Family Court Judges, the Conference of Chief Justices, and the Conference of State Court Administrators." (Order Establishing the Indiana Innovation Initiative, September 24, 2019, Case No. 19S-MS-512) We have performed our task, and as requested, we have analyzed research throughout the country on court reform and have assessed the impact of innovations in other states and jurisdictions. In the FLT final report, innovative strategies are outlined based upon the collective research and experience of the individual FLT members. The FLT believes these recommendations in this final report will achieve the goals of the Indiana Innovation Initiative "to make Indiana's system of justice [in family law matters] more efficient, less expensive, and easier to navigate while continuing to ensure that justice is fairly administered and the rights of all litigants protected." (Order Establishing the Indiana Innovation Initiative, September 24, 2019, Case No. 19S-MS-512)

Our collective group of FLT members included prominent members representing the entire state of Indiana in different entities all specializing in family law matters. The FLT included judges, law professors, lawyers, mediators, psychologists, and supreme court employees. The FLT conferred with outstanding experts around the country by way of zoom conferencing to educate our members and help create the framework to formulate our recommendations. With over a year of monthly meetings and many subgroup meetings, we have spent a great deal of time considering Indiana's need for family law reform and the innovations that are needed to achieve the goals of the charge given to the FLT.

We recognize that each court and each county have different resources and needs. Our recommendations, however, are achievable and meant to serve counties of all sizes. The members of the FLT are grateful for the opportunity to serve the State of Indiana and to make recommendations aimed at improving family law processes and outcomes for the benefit all Hoosiers, especially children. We are passionate about the need for change to ensure that courts do not prolong or add to the stress of families involved in domestic relations litigation. Family law matters are unique civil law matters that require and deserve special attention and leadership in the state's judiciary. We believe these recommendations will aid family law judges, lawyers, and litigants to resolve family law matters more efficiently, with less trauma, and better outcomes for families.

Implementation of these recommendations, which will improve the operations in family courts, undoubtedly will serve the added benefit to promote public confidence in Indiana's judiciary.

I have had the great pleasure of serving as Chair on the FLT. I thank all members for their dedication and invaluable contributions. And a special thank you to Leslie Dunn, who has worked tirelessly on this project.

Respectfully submitted,

Elizabeth F. Tavitas, Judge
Court of Appeals of Indiana

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Executive Summary

The Indiana Supreme Court issued an Order Establishing the Indiana Innovation Initiative on September 24, 2019 and created the Family Law Taskforce (FLT) as a subgroup of the Initiative.[1] The Order directed the FLT to:

- analyze the research on court reform
- assess the impact of innovations in other states
- identify innovative strategies to significantly improve court processes
- provide a written report with findings and recommendations

Toward the goal of identifying innovative strategies to improve court processes, the FLT has placed great importance in working to implement the "13 Principles for Family Justice Reform" as detailed in the Family Justice Initiative's *Principles for Family Justice Reform*, supported by resolution of the Courts, Children, and Families Committee of the Conference of Chief Justices at its 2019 Midyear Meeting.[2]

The FLT met at the end of 2019 for a brainstorming session and to discuss needed changes in family law practice. Over the last several months, the FLT had twelve meetings and created seven subgroups that met on numerous occasions. FLT members—comprised of the President of the Indiana Bar Association, family law practitioners, the trial and appellate court judiciary, law professors, and psychologists—have spent substantial time researching and discussing various innovative ideas for improving family law justice in Indiana.

The FLT developed twenty-eight ideas that were studied and discussed. The FLT members completed a survey to evaluate the priority that should be given to the various innovative ideas. The FLT ultimately decided to recommend thirteen preliminary proposals to the Innovation Initiative, which were approved by the Initiative on August 19, 2020. Since that time, the FLT has discussed and researched additional innovative ideas and now makes nineteen recommendations to the Innovation Initiative and the Indiana Supreme Court for their consideration.

When the pandemic began and courts were forced to temporarily suspend normal operations, the FLT convened a COVID-19 subgroup of family law judges and practitioners. The subgroup had several emergency meetings to discuss issues facing trial courts and practitioners due to the pandemic. The FLT issued guidance on April 1, 2020, that was sent to all trial judges in the

[1] *See* Appendix A: Order Establishing the Indiana Innovative Initiative.
[2] Family Justice Initiative, *Principles for Family Justice Reform* 3 (2019), https://www.ncsc.org/__data/assets/pdf_file/0021/19173/family_justice_initiative_principles_final.pdf (archived at https://perma.cc/PHK5-KZP7).

Supreme Court's Weekly Bulletin.[3] This guidance provided additional information to assist courts and local communities on how to make child support payments, how to file protection orders electronically, and listed additional resources for courts, attorneys, and families.

In addition, on June 3, 2020, the FLT's COVID-19 subgroup issued Guidelines on Resuming Court Operations in Family Law Cases to further assist trial court judges and to help alleviate the impact of the pandemic on parties and children in family law cases.[4] These Guidelines provided general guidance to trial courts on handling cases in a pandemic, as well as specific advice for family courts, such as using trauma-informed practices, triaging cases, and prioritizing cases involving the safety and emotional well-being of children of domestic violence.

The first finding and recommendation of the FLT is that Indiana adopt the Family Justice Initiative's (FJI) 13 Principles of Family Justice Reform[5] and set goals to implement these Principles through the FLT's additional recommendations. After research, discussion and evaluation, the FLT has developed 19 recommendations for consideration by the Supreme Court, all of which incorporate various FJI Principles.

The first 5 recommendations are essential for reform, and the FLT recommends focus on and implementation of these recommendations first. These recommendations include:

- Case Management Standards
- Triage
- Online Dispute Resolution (ODR)
- Judicial and Trauma-Informed Training and
- Resources for Self-Represented Litigants

In fact, the FLT will be starting ODR pilots in four counties in March 2021. In addition, through the work of the FLT, the Indiana Office of Court Services (IOCS) has committed to a collaboration with a national organization to create a trauma-informed court system in Indiana. Triage and case management standards are used throughout the country and the FLT believes these two recommendations are the most critical to family law justice in Indiana and should be implemented as soon as possible.

Another proposal which the FLT recommends as important for implementation soon is the adoption of Guardian ad litem Guidelines for Family Courts, which are needed for better and more consistent practice throughout the state. There are several proposals involving the use of technology which will require assistance from the Indiana Office of Court Technology (IOCT), but the FLT also

[3] *See* Appendix B: April 1, 2020 Guidance from Family Law Taskforce.
[4] *See* Appendix C: June 3, 2020 Guidelines on Resuming Operations in Family Law Cases.
[5] Family Justice Initiative, *Principles for Family Justice Reform* (2019), https://www.ncsc.org/__data/assets/pdf_file/0021/19173/family_justice_initiative_principles_final.pdf (archived at https://perma.cc/PHK5-KZP7).

recommends implementing these proposals in 2021 or when feasible. These recommendations include:

- Order Banks
- Text Message Hearing Reminders
- Financial Declaration Guided Interview
- Updates to the Parenting Time Calendar
- User Satisfaction Surveys

The FLT also presents several new recommendations since its preliminary report. These include:

- Development of Consistent, Research-Informed Parenting Classes
- Updates to the Mediator Registry
- Proposed Statutory Changes to Address Inconsistences
- Proposed Changes to the ADR Fund Plan Statute and ADR Rules
- Adoption of a Statewide Rule Allowing Informal Family Law Trials

The FLT now presents these nineteen recommendations to the Innovation Initiative and the Indiana Supreme Court for approval and for guidance as to implementation and prioritization. The FLT has previously posted the preliminary FLT report on the Supreme Court's website but did not receive any feedback from the public or others through the website. The FLT did receive feedback from the Domestic Relations Committee and the family law sections of the bar across the state through FLT members who are active in those organizations.

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A special thank you to **Kate Guerrero** and **Katie Meger Kelsey** for their assistance with the Family Law Taskforce.

Introduction

The Family Law Taskforce adopted the FJI's 13 Principles of Family Reform and set goals to implement these principles through the Taskforce's recommendations to the Supreme Court.

The FLT recognizes the need for change in Indiana family courts and adopted the FJI's 13 Principles of Family Reform as the first step in embracing needed change.[6] The FJI was established to provide courts with validated, data-informed strategies for improving the way courts process family law cases. The FJI is a project of the IIAALS, the NCSC, the Conference of Chief Justices and Family Court Judges, with funding from the State Justice Institute (SJI). The FJI was designed to evaluate and improve the way courts handle domestic relations cases, to develop guidelines and best practices for domestic relations case processing, and for the purpose of making family courts less adversarial, more efficient and more responsive to the needs of families involved in litigation.

At the heart of the FJI recommendations is the premise that courts ultimately must be leaders and are responsible for ensuring access to family justice and for managing cases toward just and timely resolutions. The FJI principles are designed to remove unnecessary procedural barriers that prevent parties from resolving cases quickly and cost-effectively; to offer appropriate resources and tools for parties to use to develop solutions that fit their unique circumstances; and to identify and provide appropriate judicial involvement in high conflict cases with especially vulnerable parties and children.[7]

At the Conference of Chief Justices/Conference of State Court Administrators (CCJ/COSCA) Annual Meeting in 2020, CCJ/COSCA endorsed and encouraged their members to implement the following recommendations:

1. Ensure that family matters receive the same level of prestige and respect as other court matters by providing them with appropriate recognition, training, funding and strong leadership.
2. Aggressively triage cases at the earliest opportunity.

[6] Family courts include those courts hearing divorce, custody, and paternity cases. The number of Indiana divorce and paternity filings by county for 2018, 2019, and 2020 are shown in Appendix D.
[7] Family Justice Initiative, *Court Readiness Assessment for Implementing FJI Principles*, https://www.ncsc.org/__data/assets/pdf_file/0035/18899/fji_court_readiness_assessment.pdf (archived at https://perma.cc/5JRD-4GVU).

3. Simplify court procedures so that self-represented parties know what to expect, understand how to navigate the process, can meaningfully engage in the justice system, and are treated fairly.
4. Ensure that self-help information and services are available both in person and remotely so that all litigants can access the full range of court self-help resources in the manner that is most appropriate for their needs.
5. Offer families a choice of dispute resolution options to promote problem-solving and to minimize the negative effects that the adversarial process has on families during the court process and afterwards.
6. Promote the well-being of families, including implementation of trauma-responsive practices for families and staff throughout the life of their case and as the primary desired case outcome.[8]

The CCJ/COSCA also resolved to encourage each state to develop and implement a plan to improve the delivery of family justice and requested that the National Center for State Court and all partners take all available and reasonable steps to assist court leaders to implement family court improvements. The FLT's recommendations encompass all of the recommendations of the CCJ/COSCA resolution.

Over the last eighteen months, the FLT has conducted an extensive review of innovations across the country and received presentations by people and entities from around the country that have succeeded in implementing innovative strategies. The FLT believes that family courts can do a better job now by adopting new, streamlined procedures that use existing resources more efficiently. However, the trial courts will not be able to fully implement all of the recommendations unless some additional resources are provided.

One of the most essential elements of reform is judicial leadership. Chief Justice Rush and the Indiana Supreme Court led the charge to develop reform when they created the Innovation Initiative and its Family Law Taskforce. Now, the trial courts, court staff, and others must join the call to action and work to implement reforms. Our court system must evolve and improve to meet the needs of an ever-changing world. State courts cannot simply rely on past methods to administer justice or conduct "business as usual." The "goal is a civil justice system that is accessible, inexpensive, timely and just. Courts must confront these realities and address them head on to meet these goals in the 21st Century."[9]

[8] CCJ/COSCA, *Resolution 4 in Support of a Call to Action to Redesign Justice Processes for Families* (July 20, 2020), Microsoft Word - Resolution 4 - In Support of a Call to Action to Redesign Justice Processes for Families.docx (ncsc.org) (archived at https://perma.cc/Q5SH-TQKB).

[9] Brittany K.T. Kauffman et al., *Transforming Our Civil Justice System for the 21st Century: A Roadmap for Implementation,* INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM (2017), https://iaals.du.edu/publications/transforming-our-civil-justice-system-21st-century-roadmap (archived at https://perma.cc/R7H2-KP7T).

The FLT Chair, Judge Elizabeth Tavitas, presented the recommendation to adopt the 13 Principles of Family Justice Reform to the Innovation Initiative, which subsequently approved this recommendation. All of the FLT recommendations include one or more of the following FJI Principles.

The 13 Principles of Family Justice Reform are divided into four sections:

A. Problem-Solving Approach

1. Direct an Approach that Focuses on Problem Solving
2. Involve and Empower Parties
3. Courts are to be Safety- and Trauma-Responsive
4. Provide Information and Assistance

B. Triage Family Case Filings with Mandatory Pathway Assignments

5. Use a Service-based Pathway
6. Streamlined Pathway
7. Tailored Services Pathway
8. Judicial/Specialized Pathway

C. Training and Stakeholder Partnerships

9. Training and Stakeholder Partnerships
10. Identify and Strengthen Community Partnerships

D. Data Collection, Evaluation, and Technology Innovation

11. Improve Ongoing Data Collection, Analysis, and Use of Data to Inform Case Management
12. Collect and Analyze User-Evaluation Metrics
13. Implement Innovative and Appropriate Technology

Family law touches the most central aspects of Indiana citizens' lives. The decisions made in family courts have a dramatic and lasting impact on families and children. For many people, their experience in family court will shape their opinion of the courts. When people are given an opportunity to present their case and have it resolved fairly and in a timely manner, they are more likely to accept the outcome and trust the judiciary and the court system. The FLT's recommendations promote greater efficiency and consistency while ensuring meaningful and timely access to the courts.

Family courts are under-resourced, and the increasing number of SRLs presents unique challenges to the courts' ability to provide meaningful access to justice. The FLT was charged with analyzing research on court reform, assessing the impact of innovations in other states and identifying strategies for significantly improving court processes. Some of these recommendations can be implemented quickly; others may require changes in legislation and court rules.

All of the recommendations are aimed at making the processing of family law cases more efficient and effective while addressing barriers to justice that exist. While many of these barriers may be addressed by new streamlined procedures that use existing resources more efficiently, additional resources will be required to fully implement all the recommendations. However, the FLT members believe implementing these recommendations will significantly improve access to justice for families and children who come before the courts to resolve their disputes. This is an ongoing process, as demonstrated by our call for a group to continue to study and implement innovations.

Family Law Taskforce Recommendations

The FLT presents the following 19 recommendations to the Innovation Initiative and the Indiana Supreme Court for approval and for guidance as to implementation and prioritization.

1. Case Management Standards

The Family Law Taskforce recommends the creation and utilization of case management standards, which implement time frames for pretrial conferences, discovery, case resolution, and other case activities and hearings.

The FLT recommends that all trial courts hearing family law cases develop a case plan along with triaging of cases.[10] FJI has found that case management is integral for efficiently and effectively handling family law cases. To be effective, family law courts must implement a plan to manage the flow of cases in an orderly and systemic manner. Using case management standards, courts routinely review the status of family law cases and assess their progress toward disposition according to court standards. Use of case management standards throughout a case allows the court to organize events in ways that leverage staff and judicial time and solve procedural problems at the earliest point in a case. An effective case management order requires judicial leadership, planning, and accountability and can result in more effective and efficient court operations and cost savings.

Time frames for disposition of family law cases also provide greater efficiency, less trauma to families, conserve court resources (as well as litigant resources), and provide greater customer service to families during the family court process. Some timelines are set forth in statutes;[11] however, there is no best practice or guidance in Indiana as to how long a family law case should be pending. As a result, many family law cases are delayed for long periods of time, causing further trauma to families and children. Court delays and the lack of time frames can cause injustice and unfairness to parties without resources and can be used to manipulate the system by a party who does have resources.

[10] Family Justice Initiative, *Principles for Family Justice Reform* 3 (2019), https://www.ncsc.org/__data/assets/pdf_file/0021/19173/family_justice_initiative_principles_final.pdf (archived at https://perma.cc/PHK5-KZP7).

[11] I.C. § 31-15-4-5 provides that the court shall immediately schedule a preliminary hearing upon filing of a petition for temporary child support or temporary custody of a child entitled to support. The court shall determine whether to grant or deny the petition not later than 21 days after the petition is filed. I.C. § 31-15-4-6.

"Especially when children may be involved, courts should be vigilant to ensure that the early stages of dissolution cases do not fall prey to party-caused delay."[12]

> "In many instances, the most important pre-trial step is the issuance of a temporary order to stabilize the financial and parenting situation pending final judgment. For the safety and security and well-being of the spouses and children, it is important that an order be established early on addressing child support, spousal support (maintenance), custody (parental rights and responsibilities), and visitation (parent/child contact). Other matters that may need to be resolved early include possession of the dwelling, and, if not resolved through a domestic violence proceeding, orders to protect the safety of either spouse."[13]

The FLT has researched case management plans for family law cases in other states. Most states have case management measures in place for domestic relations cases. The tools used to assist case management include court rules, comprehensive case management orders, triage pathways, and most importantly, judicial oversight of cases. Judicial oversight includes the use of court staff and/or other persons to review cases for placement in the appropriate pathway and for referral to ADR and other resources.

The FLT will work with Indiana's family court judges to create family law case management standards and work with the IOCT regarding the use of flags and reports in Odyssey to assist in case management.

The FLT recognizes that each county and each court have different resources that affect the amount of judicial oversight. The FLT, however, holds the position that despite limited resources, every court can benefit from case management standards and expectations for parties.

[12] Richard Van Duizend et al., *Model Time Standards for State Trial Courts*, NATIONAL CENTER FOR STATE COURTS 21 (2011), https://www.ncsc.org/__data/assets/pdf_file/0032/18977/model-time-standards-for-state-trial-courts.pdf (archived at https://perma.cc/NV3T-ZW4C).
[13] Id.

The FLT has applied for an Implementation Lab Initiative, which has been approved, with the National Center for State Courts (NCSC) to receive assistance in creating specific case management plans in conjunction with triage pathways for domestic relations cases in Indiana. We recommend the following for all courts:

1. Adoption of a state case management rule for domestic relations cases.
2. Triage of cases at filing; especially important for SRLs.
3. Issuance of a comprehensive case management order early in the case to set deadlines and expectations.
4. Use of technology to track case pathway and duration of the pending case.
5. Use of national time standards.
6. Trial Rule 41(E) hearings to dispose of cases.
7. Quarterly reports identifying the duration of family law cases.

Model Time Standards for State Trial Courts[14]

Family/Dissolution/Divorce/Allocation of Parental Responsibility recommends family law cases should be resolved as follows:

75% within 120 days*

90% within 180 days*

98% within 365 days*

The ABA also has Time Standards in Domestic Relations cases, which are more aggressive, and it does not appear that any state has adopted these standards, but two states have come close. The ABA Time Standards are as follows:

90% within 90 days

98%: within 180 days

100% within 365 days

Many states use a case management order in the beginning of a case to set timelines for the pretrial conference, for the completion of discovery, for the completion of mediation, and for a final trial conference and a trial date. The FLT has researched and reviewed the case management plans for family law matters in 22 states. Two states in the Midwest are of interest.

[14] *Id.* at 19.

Illinois

In Illinois, time limitations for "allocation of parental responsibilities" (dissolution of marriage and paternity cases) are set by Supreme Court Rule. Illinois Supreme Court Rule 922 requires all allocation of parental responsibilities proceedings to be resolved in 18 months from the date of service of the petition or complaint to final order. If this time limit is not met, the trial court must make written findings as to the reason for the delay. The 18-month time limit does not apply if the parties, including the GAL, agree in writing and the trial court makes a written finding that the extension of time is for good cause shown. If the parties do not agree, the court may consider whether an extension of time should be allowed for good cause shown.

Illinois Supreme Court Rule 923 requires an initial case management conference to be held not later than 90 days after service of the petition or complaint. This rule also requires a full case management conference not later than 30 days after mediation. Prior to the case management conference, the parties are required to do the following: disclose to the other party a comprehensive financial affidavit; and file with the court a written proposed parenting plan and send it to the other party. At the case management conference, a trial date is provided; the date will depend on the complexity of the issues.

Michigan

In Michigan, all trial courts are required to maintain current caseflow management plans consistent with the case processing time guidelines established by the Michigan Supreme Court. In 1991, the Michigan Supreme Court, through Administrative Order 1991-4, explicitly recognized that ". . . the management of the flow of cases is properly the responsibility of the judiciary." The court reaffirmed its commitment in 2003 and again in 2011 through Michigan Supreme Court Administrative Order 2011-3. Further revisions were made pursuant to Michigan Supreme Court Administrative Order 2013-12.[15]

Michigan's Supreme Court Administrative Order No. 2013-12, states as follows:

> The management of the flow of cases in the trial court is the responsibility of the judiciary. In carrying out that responsibility, the judiciary must balance the rights and interests of individual litigants, the limited resources of the judicial branch and other participants in the justice system, and the interests of the citizens of this state in having an effective, fair, and efficient system of justice. Accordingly, on order of the Court, A. The State Court Administrator

[15] Michigan Supreme Court Administrative Order 2013-12, https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/Documents/Administrative%20Orders.pdf (archived at https://perma.cc/5DFX-LTHC).

> is directed, within available resources, to: 1. assist trial courts in implementing caseflow management plans that incorporate case processing time guidelines established pursuant to this order; 2. gather information from trial courts on compliance with caseflow management guidelines; and 3. assess the effectiveness of caseflow management plans in achieving the guidelines established by this order. B. Trial courts are directed to: 1. maintain current caseflow management plans consistent with case processing time guidelines established in this order, and in cooperation with the State Court Administrative Office; 2. report to the State Court Administrative Office caseflow management statistics and other caseflow management data required by that office; and 3. cooperate with the State Court Administrative Office in assessing caseflow management plans implemented pursuant to this order.

A guide to caseflow management was developed in response to the Court's mandate and revised to incorporate changes produced by subsequent Supreme Court Administrative Orders.[16]

The Caseflow Management Guide provides judges and practitioners with guidance in developing and improving caseflow systems and the following court management principles. The Guide provides that:

1. Caseflow management is the supervision or management of the time and events necessary to move a case from initiation to disposition or adjudication.
2. Court supervision of case progress, including adjournments, is necessary for an effective and efficient case management system.
3. Judicial support and leadership and the involvement of the bar and justice agencies are critical to the development and maintenance of a caseflow management system.
4. Management information, whether from an automated or manual system, is needed to determine if the court is meeting its caseflow management goals and objectives, assess the effectiveness of case management procedures and practices, and determine the need for change.

[16] Michigan's Case Flow Management Guide, https://courts.michigan.gov/Administration/SCAO/Resources/Documents/Publications/Manuals/cfmg.pdf (archived at https://perma.cc/35RN-2N2G).

Michigan's Supreme Court Administrative Order No. 2013-12 sets forth the following timelines:

Domestic Relations Proceedings:

a. *Divorce Without Children.* 85% of all divorce cases without children should be adjudicated within 182 days from the date of case filing and 98% within 364 days.
b. *Divorce With Children.* 85% of all divorce cases with children should be adjudicated within 301 days from the date of case filing and 95% within 364 days.
c. *Paternity.* 75% of all paternity cases should be adjudicated within 147 days from the date of case filing and 95% within 238 days.
d. *Responding Interstate Establishment.* 75% of all incoming interstate actions to establish support should be adjudicated within 147 days from the date of case filing and 95% within 238 days.
e. *Child Custody Issues, Other Support, and Other Domestic Relations Matters.* 75% of all child custody, other support, and other domestic relations issues not listed above should be adjudicated within 147 days from the date of case filing and 95% within 238 days.

Additional information about case management is available on their website.[17]

At the heart of the Civil Justice Initiative Recommendations "is the premise that the courts ultimately must be responsible for ensuring access to civil justice. Once a case is filed in court, it becomes the court's responsibility to manage the case toward a just and timely resolution."[18] Based on the foregoing and using the Illinois and Michigan case management rules as a guideline, the FLT recommends the creation and utilization of case management standards, which implement time frames for pretrial conferences, discovery, case resolution, and other case activities and hearings.

Adoption of case management standards incorporates FJI Principle 1, Direct an Approach that Focuses on Problem-Solving, and Principle 4, Provide Information and Assistance.

[17] Michigan Courts Case Management, https://courts.michigan.gov/Administration/admin/op/Pages/Caseflow-Management.aspx (archived at https://perma.cc/LD6R-X6BL).
[18] Civil Justice Initiative, *Call to Action: Achieving Civil Justice for All, Recommendations to the Conference of Chief Justices by the Civil Justice Improvements Committee,* NATIONAL CENTER FOR STATE COURTS 16 (2016), https://www.ncsc.org/__data/assets/pdf_file/0021/25581/ncsc-cji-report-web.pdf (archived at https://perma.cc/F9SP-9YH6).

2. Triage Family Law Cases

The Family Law Taskforce recommends implementing a triage process to help manage case flow in family law cases.

Several FJI Principles involve Triage of family cases using pathway assignments. The premise behind the pathway approach "is that different types of cases need different levels of case management and different rules-driven processes. Data and experience tell us that cases can be grouped by their characteristics and needs. Tailoring the involvement of judges and professional staff to those characteristics and needs will lead to efficiencies in time, scale and structure."[19] The Civil Justice Initiative's triage approach goes beyond case management techniques in that a pathway assignment is undertaken at filing, is based on a broader array of case characteristics and needs than case type, and is flexible, allowing a case to move across pathways if and when necessary.[20] The FJI has provided extensive guidance to courts to assist them in implementing triage using the pathways approach.[21]

The FLT has conducted research on triage processes in various states. Triage involves an early screening and assessment of the case to determine the appropriate pathway for that case based on a variety of factors, such as whether the parties are in full or partial agreement, whether children are involved, whether SRLs are involved, how much judicial intervention is needed, and other factors. The case is then assigned a flexible pathway that meets each family's needs and matches them with appropriate resources.

For example, under the FJI Principles, a streamlined pathway is appropriate for cases that require minimal court resources and benefit from swift resolution. A tailored services pathway is appropriate for cases that require more than the minimal court resources of a streamlined pathway case but less than the resources required for the judicial/specialized cases, which require the greatest court resources; this could offer an opportunity for problem-solving between the parties. The judicial/specialized pathway is designed for cases that necessitate substantial court-based or community services and resources to reach resolution or for cases in which parties cannot, or should not, problem-solve together without court supervision, such as cases involving domestic violence.

[19] *Id.*
[20] Family Justice Initiative, *Principles for Family Justice Reform* 9 (2019), https://www.ncsc.org/__data/assets/pdf_file/0021/19173/family_justice_initiative_principles_final.pdf (archived at https://perma.cc/PHK5-KZP7).
[21] *See* Family Justice Initiative, *A Model Process for Family Justice Initiative Pathways* (2019), https://iaals.du.edu/sites/default/files/documents/publications/family_justice_initiative_pathways.pdf (archived at https://perma.cc/UES2-VFEA).

More specifically the three pathways are typically utilized as described below:

A. **Streamlined:** This track is assigned when a streamlined process, requiring little exercise of discretion and usually no hearing, is appropriate. Examples of typical processes that fit this track are administrative proceedings focused on limited issues (e.g., child support enforcement), default proceedings, and simple cases where the parties seek an order approving a stipulated result.
B. **Tailored Services:** These cases, while not suitable for the streamlined track, are typical and do not include sensitive matters or issues likely to need expert or specialized training to be adequately addressed. Virtually all these cases will be suitable for some form of facilitated settlement.
C. **Judicial/Specialized:** Cases involving domestic violence, child abuse, substance abuse, or mental health issues require specialized knowledge and expertise to handle them safely and appropriately. These cases benefit from a greater degree of judicial involvement, provided that the judge is adequately trained on these issues. Such cases can be suitable for a facilitated settlement if the facilitator has sufficient training and if appropriate safeguards are taken (such as shuttle mediation, staggered arrival and departure times, separate waiting areas); some form of alternative dispute resolution may be preferable since litigation can be traumatizing.[22]

The FJI also created a protocol and templates that can be adapted for use in any jurisdiction and steps to assure a level of standardization for triage, while still providing flexibility.[23] The report contains a sample Case Questionnaire to be filled out by the parties to obtain information to determine pathway and other useful tools for courts to use during the pendency of a triaged case.

The FLT has researched other triage plans in the United States and in other countries. Some of the ways in which case information is gathered in order to triage cases to determine the appropriate path include:

- Review of pleadings and history of case.
- Questionnaire submitted to both parties by court personnel to determine appropriate path at time of filing.
- ODR system that performs triage function.
- Mediation centers/mediators/facilitators conduct interview of parties and assign to pathway.
- Pretrial conferences in which the judge determines pathway at the pretrial conference.

[22] Family Justice Initiative, *Pathways Protocols and Templates* (2020), https://ncsc.contentdm.oclc.org/digital/collection/famct/id/1625/rec/3.
[23] *Id.*

The FLT examined state triage plans from Alaska, Colorado, Connecticut, New Hampshire, Utah, and Michigan, as well as county triage plans from eight counties and triage plans from four foreign countries.

In addition, three counties in Indiana are currently informally piloting triage processes for family law cases on their own. These courts are using Odyssey to assist with triage. After determining the proper pathway, the courts are adding a case flag in Odyssey indicating the pathway. Odyssey reports can be run from these case flags showing which cases are in which pathway and how long they have been pending. In the future, IOCT will work with the judges to develop a dashboard to view their triaged cases. From the experience of the judges using triage in these counties, we have learned that the judicial/specialized pathway, designed for high conflict cases in which judicial leadership and oversight is especially needed, is helpful in identifying what other assistance could benefit families. Examples of services that may be ordered by the court in these more complex cases include:

- Mediation
- GAL
- Parallel parenting
- Judicial mediation
- Parenting Coordinator
- Parenting Classes
- Substance abuse evaluation
- Family and Individual counseling
- High Conflict parenting classes
- Community Partners referral

The FLT recommends that all courts hearing family law cases use the FJI Model Triage plan to develop a triage system for their family law cases. Triage allows courts to identify cases that can be quickly resolved and to identify other cases requiring more judicial involvement and resources. Implementation of triage will require innovative thinking and planning. Judicial training to educate judges about the triage process, how Odyssey can be used in triage and other benefits of triage for courts and litigants will be crucial for implementing triage.

The FLT recognizes that, when courts gather information for triage, courts must be cognizant of issues involving domestic violence and *ex parte* communications. These issues require trial courts to formulate systems that avoid *ex parte* information to the court and court staff and a plan for identification and proper handling of cases in which domestic violence has been identified.

Floyd County has received an IOCS grant to enlist the assistance of Dr. Brittany Rudd, who is a faculty member and Director of Implementation Science and System-Involved Youth Research at the University of Illinois at Chicago, to research and develop a triage plan for Floyd County and other Indiana counties based upon evidence and research of court practices and the effects and

benefits to families in domestic relations cases. According to Floyd County's 2021 Family Court Grant application, "Dr. Brittany Rudd is the leading expert in implementation science as it pertains to family law."

In addition, through the work of the FLT, IOCS has applied and been accepted for an Implementation Lab Initiative though the National Center for State Courts (NCSC) that will provide consultation and assistance in creating case management tools and procedures incorporating triage of cases into appropriate pathways. Dr. Rudd and the Implementation Lab Initiative will work together to create case management and triage pathways in Indiana that will assist the courts in triaging cases in a fashion that best suits the issues in the case without causing harm to family dynamics and children.

Triage of family law cases implement FJI Principles 5-9 on Triage of Family Case Filings with various pathway approaches.

3. Online Dispute Resolution for Family Law Cases

The Family Law Taskforce recommends online dispute resolution services to improve the experience of families who have litigation in Indiana courts.

ODR refers to "the use of information and communications technology to help parties prevent, manage, and resolve disputes."[24] ODR is typically made available to litigants in cases through a web-based platform where they can be walked through the completion of a proposed agreement regarding parenting time, custody, and in some cases, property distribution, and submit their proposal to the other party for their review and response. Through this back-and-forth negotiation process, parties will be able to reach agreement on all or some of the issues in dispute. If no agreement, or only a partial agreement, is reached, parties may be able to have access to an ADR service provider to further assist the parties in reaching a full agreement. After negotiations have completed, with or without the use of an ADR service provider, the ODR platform will produce an agreement that can be filed with the court. If a mediator is involved, the agreement could be e-filed by the mediator. This will ideally allow the parties, any necessary ADR service providers, and court staff to resolve the dispute without ever having to leave their homes or offices.

[24] Colin Rule, *Online Dispute Resolution and the Future of Family Law*, FAMILYLAWYERMAGAZINE.COM, Nov. 13, 2019, updated Mar. 17, 2020, https://familylawyermagazine.com/articles/online-dispute-resolution-and-the-future-of-family-law/ (archived at https://perma.cc/MQ3W-EQ9U).

While the vast majority of circumstances where ODR is in use in the United States is focused on small claims, general civil, and traffic violation disputes, some have begun using ODR for family law cases.[25] "ODR processes offer a number of advantages over traditional court processes for many court customers:

- Parties are able to attempt to resolve their dispute on their own terms;
- Parties can resolve their case without having to go to court;
- ODR applications are available 24 hours a day, 7 days a week, and the parties can work on their proposals and counterproposals at their convenience;
- ODR users can opt into and out of the voluntary process;
- ODR is usually offered at no cost, although involvement of a third party may involve payment of a fee;
- ODR speeds up the resolution both of cases in which it is used and of the remaining cases on the court's docket; and
- Users report high levels of satisfaction with the system."[26]

Other jurisdictions have seen cases resolved in less time and with higher customer satisfaction using ODR, rather than through litigation, especially in the context of small claims and domestic relations cases. ODR and other dispute resolution methods may best serve the needs of these individuals because the processes allow them to have increased control over the outcome of the case.[27] ODR offers a path to better results for customers and reduced caseloads for courts, which is especially helpful at this time due to backlogs in cases delayed during the pandemic and for courts facing an overloaded docket even under normal circumstances. The need for ODR has been heightened by the public health emergency relating to the coronavirus that has limited in-person contact.

Many counties in Indiana use the domestic relations ADR fund plan statute[28] to collect fees to pay for mediation and other forms of ADR for family law litigants with the least ability to pay. However, no courts currently offer mediation through an online platform. Incorporating ODR would especially benefit Indiana's rural and/or smaller counties, which may not have been able to adopt their own ADR fund plans due to a lower volume of cases, which may not have a sufficient number

[25] American Bar Association Center for Innovation, *Online Dispute Resolution in the United States Data Visualizations*, AMERICAN BAR ASSOCIATION (Sept. 2020), https://www.americanbar.org/content/dam/aba/administrative/center-for-innovation/odrvisualizationreport.pdf (archived at https://perma.cc/6KH7-TA5B).
[26] John M. Greacen, *Eighteen Ways Courts Should Use Technology to Better Serve Their Customers*, IAALS, THE INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM 19 (Oct. 2018), https://iaals.du.edu/sites/default/files/documents/publications/eighteen_ways_courts_should_use_technology.pdf (archived at https://perma.cc/UQR7-9T9S).
[27] Danielle Linneman, *Online Dispute Resolution for Divorce Cases in Missouri: A Remedy for the Justice Gap*, 2018 J. DISP. RESOL. 15 (2018), https://scholarship.law.missouri.edu/jdr/vol2018/iss1/17 (archived at https://perma.cc/6JNX-F66E).
[28] I.C. §§ 33-23-6.

of (if any) local mediators, and whose litigants may have extraordinary time and expense burdens in traveling to the courthouse.

The FLT collectively, and members individually, have sought out demonstrations and information from other states that have implemented an ODR solution. The group viewed demonstrations of two ODR platforms, Matterhorn and Modria, and engaged in a discussion about the success of implementations these two platforms' vendors have seen in other states. A subgroup of the FLT also met with the Family Mediation Center for Clark County, Nevada, which uses the Modria ODR platform to serve their clients. The Family Mediation Center also shared their policies and other documents they use in ODR. The results of this meeting were presented to the FLT at large.

The Technology Workgroup of the Innovation Initiative has received approval to pilot ODR in small claims cases. The FLT has worked closely with Chief Innovation Officer Robert Rath and Implementation Specialist Janelle O'Malley to develop a plan to also pilot ODR in family law cases in four counties: Marion, Monroe, Steuben and Vigo counties. The FLT has had meetings with the judges in these four counties to discuss the parameters of the pilots and to assign them to one of the two platforms the Technology Work Group has selected. Two subgroups of the FLT, the Judges subgroup and the Technology subgroup, have been active in developing some preliminary guidelines and parameters for the use of ODR in family law cases. A common settlement agreement form has been drafted by FLT members and the judges in the pilot counties and will be used as the template for the parties. The pilots are scheduled to begin in March 2021 and continue for six (6) months. After that time, the pilot judges will convene and discuss the benefits of each system and of using ODR. This information will then be used to determine if a vendor will be selected for Indiana, with the goal of making ODR available to other family courts in Indiana in the near future.

This project will complement other recommendations from the FLT. In particular, ODR can help courts to triage domestic relations cases to determine the pathway that fits the complexity of each case. As mentioned in principle 7 of the FJI Principles, Tailored Services Pathway, ODR is one of several non-adversarial processes central to this pathway. "Where parties are capable of and amenable to safely engaging together in the process, referrals to self-help resources, court services, and non-adversarial dispute resolution processes…can encourage problem solving toward resolution."[29] "ODR is a powerful tool that can assist jurisdictions in advancing the cause of justice and rule of law."[30]

[29] Family Justice Initiative, *Principles for Family Justice Reform*: https://www.ncsc.org/__data/assets/pdf_file/0021/19173/family_justice_initiative_principles_final.pdf (archived at https://perma.cc/PHK5-KZP7).

[30] Joint Technology Committee (JTC) of the Conference of State Court Administrators (COSCA), the National Association for Court Management (NACM) and the National Center for State Courts (NCSC), *Case Studies in ODR for Courts: A view from the front lines*, JTC RESOURCE BULLETIN (Version 1.0, adopted Nov. 29, 2017), https://www.ncsc.org/__data/assets/pdf_file/0023/18707/2017-12-18-odr-case-studies-revised.pdf (archived at https://perma.cc/L2PH-Y6LN).

The ODR implementation team will work with the courts implementing Triage to determine the best use of ODR when Triage pathways are being used. ODR will be the initial route for all Streamlined Pathway cases (cases without concerns for child safety and without serious concerns about parent communication). Other cases will be referred by the judges in the pilot counties as well as after an assessment of the case.

We recommend that the Office of Judicial Administration (OJA) begin its pilot in family law cases as soon as possible. This is the proposed implementation schedule:

A. **Summer 2020 – Winter 2021:**
    a. Develop a proposed outline for the ODR interview and process. (Completed)
    b. Find counties willing to pilot. (Completed)
    c. Develop forms and instructions to be used in the pilot. (Completed)
    d. Begin working with vendors. (In process)
B. **Spring 2021:** The FLT recommends that the OJA implement pilot ODR programs in family law courts, starting in Monroe, Vigo, Marion, and Steuben Counties.
C. **Summer/Fall 2021:** Evaluate the pilots, and expand to additional counties, by judicial district, in an effort to make mediators from the entire judicial district more available to the counties with fewer mediators.
D. **The ODR recommendation incorporates several of the FJI Principles, including:** Principle 1, Direct an Approach that Focuses on Problem Solving; Principle 2, Involve and Empower Parties; and Principle 13, Implement Innovative and Appropriate Technology.

4. Trauma-Informed Training and Joint Training for Family and Juvenile Judges

The Family Law Taskforce recommends implementation of trauma-informed training to increase the awareness, knowledge and skills of judicial officers and court staff in working with court-involved children and families impacted by trauma. The Family Law Taskfoce also recommends joint training for family and juvenile court judges on topics relevant to both.

The development and utilization of trauma-focused training for all family court judges and court staff is of critical importance. The Adverse Childhood Experiences Study (ACES) demonstrated that an extremely high proportion of the population has experienced some form of trauma.[31] A party's effective participation in a family court case is impaired when the court environment and processes are not trauma-informed. Both the FJI and the NCJFCJ recognize the impact of trauma on families and encourage a trauma-informed approach.[32] Both also recommend that all judges and court staff who interact with parties should receive training in recognizing the the signs and dynamics of domestic violence, child abuse, and substance use, including training in understanding the effects of trauma, how trauma may present in court, and measures that can be taken to promote a trauma-responsive process and environment.[33] Judges must appropriately engage the court system to first do no harm.

The vision of the NCJFCJ is that judges and system stakeholders have a shared understanding of trauma and how it affects the behavior of youth and families and that courts have the capacity to respond effectively to victims of trauma. The NCJFCJ recommends the development of policies and

[31] The Adverse Childhood Experiences (ACE) Study, Centers for Disease Control and Prevention (Archived from the original on Dec. 27, 2015). Additional information on ACE can be found here: https://www.cdc.gov/violenceprevention/aces/index.html (archived at https://perma.cc/E9KV-AATB).
[32] Family Justice Initiative, *Principles for Family Justice Reform* (2019), https://www.ncsc.org/__data/assets/pdf_file/0021/19173/family_justice_initiative_principles_final.pdf (archived at https://perma.cc/PHK5-KZP7); National Council of Juvenile and Family Court Judges, *Trauma-Informed Courts*, https://www.ncjfcj.org/child-welfare-and-juvenile-law/trauma-informed-courts/ (archived at https://perma.cc/E2RN-5CUN).
[33] *Id.*

practices to enhance courts' capacity to respond to families and children who have experienced trauma in order to improve outcomes for children and families.[34]

The FLT consulted with the National Child Traumatic Stress Network (NCTSN) and sought their guidance on trauma-informed training. The NCTSN had previously provided a trauma training called "Think Trauma" to judges and court staff in Indiana working with children in the juvenile justice system. On December 10, 2020, Dr. Tracy Fehrenbach and Dr. Nicole Elyse St. Jean of the CCTASSI at the Northwestern University Feinberg School of Medicine, provided a presentation to the FLT entitled, "An Introduction to the National Child Traumatic Stress Network and Trauma-Informed Practices in the Justice System." The presentation explained the essential elements for trauma-informed practices, highlighted available resources and reviewed the first steps for implementing and sustaining a trauma-informed approach.

The resources offered by the NCTSN include benchcards for a trauma-informed judge, created with the NCJFCJ. One benchcard offers a series of questions to help judges gather information necessary to make good decisions for children at risk of traumatic stress disorder. Another benchcard is designed for judges to attach to orders for trauma-informed behavioral health assessments. The NCTSN offers other valuable resources including: a database of empirically supported treatments and promising practices to address trauma; tools to recognize and respond to the adverse affects of secondary trauma in the workplace; and, trauma-informed approaches that address disparities and diversity.

As a result of the FLT's discussions with the two psychologists from CCTASSI, the IOCS was offered the opportunity to collaborate with CCTASSI during their upcoming 2021-2026 grant period. On February 11, 2021, IOCS signed a letter of commitment agreeing to collaborate with CCTASSI to increase judicial officers' awareness, knowledge, and skills in working with court involved children and families impacted by trauma and to work toward creating a trauma-informed court system.[35] Specifically, the CCTASSI will provide trauma-informed training and resources, consultation, recommendations, and technical assistance services that are relevant to court staff including judicial officers, court staff, GALs and court appointed special advocates (CASAs), and others working with families. CCTASSI and the FLT are currently working with the IOCS Education Division to provide a training at the Spring Judicial College in April 2021 on the effects of trauma.

The FLT also recommends an annual or biennial joint family court and juvenile court judges conference to present on topics common to both types of cases and to offer an opportunity for judges who work with families to share their experiences and expertise. This training should include how trauma impacts families and how courts can lessen trauma by creating trauma-informed court practices. In addition, the joint training should include topics relating to children and families for judicial officers who hear family-related cases including: Domestic Relations, Paternity, CHINS,

[34] *Id.*

[35] A copy of the letter of commitment to CCTASSI signed by IOCS is attached as Appendix E.

Termination of Parental Rights (TPR), Adoption, Guardianship, and Domestic Violence. Judicial training should also include education on the FJI's 13 Principles for Reform and should highlight innovative strategies and promising practices being used across the state that improve court processes and promote better outcomes for families.

The FLT has already offered four webinars during the pandemic for family law judges and pracitioners on: Expedited Issues in Family Cases; Zoom Licenses and Hearings; Family Bench and Bar Communication; and Family Law from a Distance. These webinars were well-received and had a total attendance of 273. The FLT envisions ongoing training videos and webinars for new judicial officers and court employees on trauma-informed care and other relevant family and juvenile law related areas.

This recommendation incorporates FJI Principle 3, Courts are Safety and Trauma-Responsive and Principle 9, Training and Stakeholder Partnerships.

5. Resources for Self-Represented Litigants

The Family Law Taskforce recommends updating and expanding resources for SRLs, including continuing improvements to the Indiana Legal Help website, and the development of toolkits for SRLs, judges, and court staff. The Family Law Taskforce also recommends a rule that clarifies the distinction between legal advice and legal information.

A. The FLT recommends updating and expanding resources for SRLs.

In its preliminary report, the FLT recommended updating and expanding various resources for SRLs. The CCA and the Technology Working Group of the Innovation Initiative have been working on expanding and improving the Indiana Legal Help website by developing guided interviews and instructions to help SRLs complete and file self-help forms. FLT member Marilyn Smith has kept the FLT up to date on these projects and has arranged demonstrations of some of the technology. FLT members provided feedback on the guided interview projects and support this important work. The Indiana Legal Help website is heavily used by litigants as well as pro bono attorneys. The FLT supports ongoing efforts to make additional guided interviews available to further assist SRLs.

The FLT also supports the following collaborative efforts to improve resources for SRLs:

- Developing guided interviews with automated form generation as an option for all the family law self-help forms (in addition to offering PDF fillable forms).
- Designing a process for SRLs to file petitions electronically from the IndianaLegalHelp.org website.
- Integrating multimedia instructions (graphics, text, and video) to help guide SRLs with information about their legal issues.
- Providing guided interviews and information in multiple languages.

The FLT also recommends replicating the free civil legal clinics operating in several counties so that in-person and virtual clinics, help desks, or self-help centers are available in every county in the state.

B. The Family Law Taskforce recommends the creation of an SRL Toolkit.

The FLT recommends developing a series of SRL best-practices toolkits to assist judges, clerks, judicial staff, trusted intermediaries, and litigants in situations where one or more parties are not represented in court by a lawyer. The FLT has developed toolkit outlines that include training resources on providing legal information rather than legal advice, legal aid and *pro bono* brochures, and other resources.

In a 2015 study, the NCSC estimated that in the state courts at least one party is self-represented in approximately three quarters of civil cases.[36]

In 2016, the Conference of Chief Justices and Conference of State Court Administrators adopted recommendations for courts interacting with SRLs.[37] In 2019, the FJI of the NCSC also developed principles for meeting this challenge.[38] These recommendations and principles include:

- Provide clear, straightforward information to parties about the court process and the court system.
- Provide assistance to self-represented parties including procedural information and available resources to assist the family.
- Ensure that litigants have access to appropriate tools such as standardized court forms and checklists for pleadings and discovery requests.

[36] Civil Justice Initiative, *The Landscape of Civil Litigation in State Courts,* NATIONAL CENTER FOR STATE COURTS (2015), https://www.ncsc.org/~/media/Files/PDF/Research/CivilJusticeReport-2015.ashx (archived at https://perma.cc/566A-F88D).
[37] Civil Justice Initiative, Call to Action: Achieving Civil Justice for All, Recommendations to the Conference of Chief Justices by the Civil Justice Improvements Committee, NATIONAL CENTER FOR STATE COURTS (2016), https://www.ncsc.org/__data/assets/pdf_file/0021/25581/ncsc-cji-report-web.pdf (archived at https://perma.cc/F9SP-9YH6).
[38] Family Justice Initiative, *Principles for Family Justice Reform* (2019), https://www.ncsc.org/__data/assets/pdf_file/0021/19173/family_justice_initiative_principles_final.pdf (archived at https://perma.cc/PHK5-KZP7).

- Connect litigants as quickly and easily as possible to online information and court help for their legal issues.
- Provide real-time assistance for navigating the litigation process.
- Establish Internet portals and stand-alone kiosks to facilitate litigant access to court services.
- Empower both parties to play a proactive role in charting a course that is best suited to the family's situation and needs.

The toolkits would contain resources for judges, judicial staff, clerks, librarians, and SRLs as outlined below.

1. For Judges, the toolkit should include:

a. Guidance on the Indiana Code of Judicial Conduct, Rule 2.2, which outlines the ability of the judge to make reasonable efforts to facilitate the ability of SRL's to be fairly heard and includes steps that a judge may take to promote access to justice for SRLs.
b. The Association of Family and Conciliation Courts, Working with Pro Se Litigants: A Guide for Family Court Bench Officers, which can be found at: https://www.afccnet.org/Portals/0/Guide%20for%20Judges%20SRLs.pdf
c. A judicial benchbook using a model from the Tennessee Judges Benchbook on Meeting the Challenges of Self-Represented Litigants, which can be found at: https://www.tncourts.gov/sites/default/files/docs/final_pro_se_benchbook_-_may_2013.pdf
d. Materials from the 2015 Indiana Judicial Conference session on Unrepresented Civil Litigants.
e. Access to a judicial order bank for common SRL matters.
f. A guide to the approved court forms and resources available at: https://indianalegalhelp.org

2. For Judicial staff and clerks, the toolkit should include:

a. Examples of different types of guidance to assist court staff in answering questions posed by a member of the public about the operation of the judicial system. The FLT recommends that the Indiana Supreme Court consider adopting a court rule on public assistance, described in more detail below.
b. Training resources, sample scripts and posters on providing legal information, not legal advice.
c. Legal Advice Guide with Cake Analogy, by Marcus McGhee.
d. Georgetown Law Justice Lab, Binder of National Examples of Legal Information v. Legal Advice.
e. NCSCs material on legal information and legal advice at https://www.ncsc.org/__data/assets/pdf_file/0022/54544/Legal-Advice-vs-Legal-Info.pdf.
f. Brochures, bookmarks, and materials for posting in the courthouse and online with contact information for:
    i. legal aid and pro bono services

ii. legal clinics
iii. bar associations referrals
iv. modest means attorney panels

g. Indiana Legal Help website (https://indianalegalhelp.org) and a list of approved forms currently available.
h. Guidelines for establishing and operating in-person or virtual legal clinics or self-help centers, using the example from Vanderburgh County Family Law Clinic.

3. For Librarians, the toolkit should include:

a. An Indiana Legal Help guide: Providing Guidance to Library Patrons with Legal Needs (2020). A sample guide is attached as Appendix F.

4. For SRLs, the toolkit should include:

a. An orientation guide on how to navigate the Indiana Legal Help website at https://indianalegalhelp.org
b. A description of the online pro bono brief advice tool for SRLs at https://indiana.freelegalanswers.org
c. Video links and a guide to representing oneself in court.
d. Guide to legal clinics in courthouses and libraries in Indiana.
e. Information on ODR projects and ADR.
f. A summary of the fee waiver process for low-income SRLs.

These SRL recommendations will require partnership with various groups such as the Indiana Bar Foundation, Indiana State Bar Association, the CCA, Pro Bono Indiana, the Indiana Library Federation, legal services providers, and courts. This recommendation incorporates the following FJI Principles:

1. Direct an Approach that Focuses on Problem-Solving;
2. Involve and Empower Parties;
3. Provide Information and Assistance; and
4. Identify and Strengthen Community Partnerships.

C. The Family Law Taskforce recommends Indiana Adopt a Court Rule on Public Assistance

The FLT recommends that the Indiana Supreme Court adopt a court rule to codify and clarify existing guidance on the unauthorized practice of law so that public assistance providers have clearer guidance on what information they may provide to the public. The intent of this rule would be to enable public assistance providers to offer the best possible service and to provide accurate information without giving legal advice. The best suggestion to offer in many situations may be for

the court user to seek the advice of an attorney. A sample court rule to support public assistance providers, assembled by the FLT, is attached as Appendix G.

1. Recommendation for a rule from the Indiana Supreme Court

The Indiana Supreme Court is the only entity that has the power to regulate and define the practice of law in the state of Indiana. *See* Ind. Const. Art. 7 § 4. The Indiana Supreme Court has original jurisdiction over lawyer discipline matters and all cases involving the unauthorized practice of law and regulates the practice of law through court rules. For these reasons, the FLT recommends that the Indiana Supreme Court issue guidance in the form of a court rule on the practice of law, legal information, and legal advice.

2. Recommendation for Formal and Clear Guidance to encourage appropriate assistance from non-lawyers.

Every day, Hoosiers seek help from public assistants other than court staff, like librarians and housing and victim advocates. This recommendation would provide the public clear guidance on what constitutes legal advice so that Hoosiers can get the information they need in times of legal crisis.

Guidance offered through caselaw, as noted below, can be confusing to non-lawyer public assistants. The Indiana Supreme Court has noted that a "non-lawyer may not fully know what acts constitute legal advice." *State ex rel. Ind. Supreme Court Disciplinary Comm'n v. Taylor,* 98 N.E.3d 68, 69 (Ind. 2018). And the concise guidance from the Indiana Supreme Court on what a non-lawyer can and cannot do when helping the public to navigate a legal question is specifically aimed at court staff. *See* https://www.in.gov/courts/selfservice/unrepresented/help

The FLT recommends that the Indiana Supreme Court offer specific guidance to non-lawyer public assistants as it has to court staff. Currently, advocates for victims of domestic violence are encouraged to help those in need to file a protection order on the Indiana Supreme Court's website. While these advocates are encouraged to help a person make a court filing, they are subject to penalty if they give legal advice. *See:* https://www.in.gov/courts/help/efiling/protection

Currently, non-attorney public assistants are left to consider not offering any help to customers and patrons rather than take the risk that their help may be construed as a misdemeanor offense.

3. Protection of the Public

Statutes and rules that reserve the practice of law for attorneys are meant to protect the public from the potential consequences that may follow the giving of legal advice from unqualified people. "It is not intended to reserve to attorneys activities that may safely be conducted by laypersons." *Charter One Mortg. Corp. v. Condra*, 865 N.E.2d 602, 605 (Ind. 2007). But a lack of clear direction on what assistance a non-lawyer can offer to the public, paired with a punitive statute, risks a chilling effect

on the type of help available to Hoosiers seeking to access the court system, and may further decrease the court access that is promised to all Hoosiers.

4. Summary of Indiana Case Law and the Definition of the Practice of Law and Legal Advice

The Indiana Supreme Court has noted that the practice of law includes both the giving of legal advice and entering into an attorney-client relationship. *State Ex. Rel. Indiana State Bar v. Diaz,* 838 N.E.2d 433, 444 (Ind. 2005). And "that the core element of practicing law is the giving of legal advice to a client." *Id.* Giving legal advice creates an attorney-client relationship and such a relationship can be created by a non-lawyer. *Mayberry v. State*, 670 N.E.2d 1262, 1266-67 (Ind. 1996). Many things may make up the practice of law and the Indiana Supreme Court has not offered a comprehensive list of what constitutes the practice of law. *State of Indiana ex rel. ISBA v. United Financial Systems Corporation*, 926 N.E.2d 8,14 (Ind. 2010) (*citing Miller v. Vance*, 463 N.E.2d 250, 251 (Ind. 1984)).

Indiana Supreme Court opinions that admonish non-lawyers for giving legal advice without a license are instructive, but the line of caselaw can be confusing. In some circumstances, the selection of a legal form is legal advice. *Diaz,* 838 N.E.2d at 445. But most often the selection of a legal form for another is not considered the practice of law. *State ex rel. Ind. State Bar Ass'n. v. Ind. Real Estate Ass'n*, 244 Ind. 214, 220, 191 N.E.2d 711, 715 (1963). And many times, a legal form can even be completed by a non-lawyer for the benefit of another without engaging in the unauthorized practiced of law:

> Generally, it can be said that the filling in of blanks in legal instruments, prepared by attorneys, which require only the use of common knowledge regarding the legal consequences involved, does not constitute the practice of law. However, when the filling in of such blanks involves consideration of significant legal refinement, or the legal consequences of the act are of great significance to the parties involved, such practice may be restricted to members of the legal profession.

Id.

Under some circumstances, doing legal research for another without an attorney's supervision is the practice of law, as is the authoring and serving of legal documents on another's behalf. *State ex rel. Ind. Supreme Court Disciplinary Comm'n v. Taylor,* 98 N.E.3d 68, 69 (Ind. 2018).

5. Summary of Other Existing Indiana Guidance

Rules

The Indiana Rules of Professional Conduct include guidelines for lawyers on how they might utilize the assistance of non-lawyers under their supervision. Guideline 9.10(b) of the Indiana Rules of Professional Conduct states that "A non-lawyer assistant shall not engage in the unauthorized practice of law." The rules do not define the *unauthorized practice of law*.

Statutes

I.C. § 33-43-2-1 asserts that a person not admitted to the bar but engaged in the "business of a practicing lawyer" commits a Class B misdemeanor. The statute does not define the "business of a practicing lawyer."

Indiana Supreme Court Website

The Indiana Supreme Court's website, hosted on in.gov, includes a *Self-Service Legal Center/Representing Yourself in Court* webpage and does offer clear guidance on what court staff can and cannot do to assist a person not represented by an attorney. *See* https://www.in.gov/courts/selfservice/unrepresented/help.

Other States

Other state courts have offered similar guidance and directives for court staff, court navigator programs, and court help centers. In July 2019, the Kansas Supreme Court adopted Rule 1402, Providing Assistance to the Public, with the purpose to assist court staff in answering questions posed by a member of the public about the operation of the judicial system. The Supreme Court of Colorado, Office of the Chief Justice, issued a Directive Concerning Colorado Courts' Self-Represented Litigants Assistance in 2013. These examples of state court guidance are attached as Appendix H.

In order to increase access to justice and improve the delivery of legal information to Hoosiers who need it, the FLT recommends that the Indiana Supreme Court consider adopting a court rule to provide clear and concise guidance from the Indiana Supreme Court to Indiana public assistants on what constitutes legal advice.

This recommendation incorporates FJI Principle 1, Direct an Approach that Focuses on Problem-Solving; Principle 2, Involve and Empower Parties; Principle 4, Provide Information and Assistance; and Principle 10, Identify and Strengthen Community Partnerships.

6. Guardians ad Litem

The Family Law Taskforce recommends adopting Guardian *ad Litem* Guidelines, a Code of Ethics, and an Oversight Process

I. Overview of Proposed Guidelines and Code of Ethics

There is a need to improve GAL practices in family law and guardianship cases and a need for more uniformity and consistency in GAL practice. There is also a need to help litigants better understand the role of the GAL, as well as a need for more qualified GALs to assist judges in family law cases.

The GAL subgroup of the FLT researched and studied rules on GAL practices in ten states with robust guidelines. A Survey of the GAL Rules, Structure, Oversight and Funding from these ten states is attached as Appendix I.

The FLT is recommending the adoption of GAL Guidelines that outline the qualifications and training requirements to serve as a GAL in family law cases and which provide additional guidance to GALs. The FLT has approved a draft of GAL Guidelines that we recommend become a court rule, similar to the guidelines for Parenting Coordination outlined in detail in the IPTG. The FLT would first seek feedback from the Indiana Bar Association and family law practitioners on the GAL Guidelines. The draft GAL Guidelines are attached as Appendix J.

This recommendation incorporates FJI Principle 1, Direct an Approach that Focuses on Problem-Solving; Principle 2, Involve and Empower Parties; and Principle 4, Provide Information and Assistance.

A. Qualifications and Training

Indiana statutes do not have any qualifications for persons serving as a GAL in terms of education required or criminal background checks. Other states studied have minimum qualifications and uniform training required to become a GAL.[39] We recommend that the GAL Guidelines include a description of persons qualified to serve as a GAL and require that a criminal background check and child and abuse neglect check be conducted on all GALs.

[39] *See* 750 Ill. Comp. Stat. 5/506; Ohio Sup. Rule 48; Ga. Unif. Super. Ct. Rule 24.9; for more examples, *see also* Appendix I.

Although specific training is outlined for GALs serving in juvenile cases, Indiana provides no specific training requirements for GALs in family law cases.[40] The other states studied all have specific training requirements for GALs to ensure they are competent to serve, are professional, and have an understanding of applicable laws.[41] There are important topics that GALs should be trained on such as trauma-informed care, understanding diversity, equity and poverty, and the ethical obligations of a GAL. We recommend twelve (12) hours of initial training on required topics and six (6) hours of continuing training annually on topics relating to family law as outlined in the draft GAL Guidelines.[42]

B. Roles and Responsibilities

The GAL subgroup discussed GAL practice across the state of Indiana. The practice is not uniform and there is significant confusion amongst litigants, judicial officers, and attorneys about the role and responsibilities of a GAL. In some counties, an individual serving as a GAL is also allowed to serve in multiple roles on the same case, such as a parenting coordinator or a therapist. There is a dire need for clear and uniform guidelines like those provided in the other states studied. We recommend adopting guidelines similar to those in other states that clearly outline the duties of the GAL, including in-person contact with children, a thorough and independent investigation, a definition of what best interests advocacy encompasses and guidance on sharing a child's expressed wishes to the court.

The draft GAL Guidelines more fully outline the GAL role in court proceedings and throughout the case like other states with more robust GAL rules.[43] The draft GAL Guidelines also contain more detailed information about what should be contained in a GAL report.[44] Importantly, the GAL Guidelines make it clear that the GAL role is to make recommendations to the Court and, if necessary, monitor the case for a short period of time. There are some counties in which a GAL is left on a case for many years, which expands their role to be more of a parenting coordinator (which many of them are not trained to do) and it ties up needed resources for other cases.[45]

[40] *See* I.C. § 31-9-2-50(a) (defining a GAL for purposes of family law; only provides that non-attorney GALs must have the same training as a CASA under I.C. §31-9-2-28); *see also* I.C. § 31-9-2-28(a) (providing only that a CASA in family law cases must complete a training approved by the court).
[41] *Supra* note 40.
[42] *See* Ohio Sup. Rule 48 for an example of detailed initial and ongoing training requirements.
[43] For examples of states with well-defined roles for a GAL, *see* Ohio Sup. Rule 48; Tenn. Sup. Ct. Rule 40A; N.M. Stat. Ann. § 32A-1-7; *see also* Superior Court of District of Columbia: Practice Standards for Guardians ad Litem, *available at* https://www.dccourts.gov/sites/default/files/2017-09/Order14-01-GALPracticeStandards.pdf (archived at https://perma.cc/N6NA-4FGD).
[44] For examples of states with defined GAL report requirements, *see* Ga. Unif. Super. Ct. Rule 24.9; 23 Pa. Cons. Stat. § 5334; N.M. Stat. Ann. § 32A-1-7.
[45] For states addressing the length of a GAL appointment, *see* Ohio Sup. Rule 48; Ga. Unif. Super. Ct. Rule 24.9; Ariz. Fam. Law Proc. Rule 1, Rule 10, Rule 11; and Ariz. Rev. Stat. § 25-406.

C. Court Orders of Appointment of a GAL

The FLT recommends the use of a standard Appointment Order across the state to make GAL practice more uniform and to reduce confusion. The Order should select the factors indicating the need for the GAL and should be specific as to what the court is requesting the GAL to do and what the timelines are for completion of the investigation and report.[46] It should also outline the cost to each side so litigants have this knowledge at the beginning of the case. A sample Court Order Appointing a GAL is attached as Appendix K. The FLT also intends to seek input from the Domestic Relations Committee on the proposed Appointment Order.

D. GAL Code of Ethics

Most states have some type of Code of Ethics that applies to GALs.[47] Indiana has a Code of Ethics for CASA programs, but not one for GALs in family law cases. Using Indiana's CASA Code of Ethics as well as provisions of other states' Ethics Codes, the FLT has prepared a draft GAL Code of Ethics to be included in the GAL Guidelines, which is attached as Appendix J. The Code of Ethics covers important topics such as conflicts of interest, confidentiality, *ex parte* communications, and an anti-discrimination clause, all of which should apply to all GALs and are currently not outlined anywhere for GALs serving in family law cases in Indiana.

II. Proposed Oversight for GALs in Family Law Proceedings

There is currently no mechanism for a litigant to file a complaint about a GAL; any oversight of GALs is limited to the court in which the case is pending. This is very frustrating to litigants, some of whom have valid complaints about GALs who do not see the children for whom they are advocating or who repeatedly continue the case because they cannot complete their investigation or report in a timely manner. Some litigants and attorneys are not comfortable making complaints to the judge in an existing case for fear of retribution from the GAL and because the GAL is often a person who appears before the court on a regular basis.

The GAL subgroup examined the complaint process in fifteen states. The FLT recommends adopting a GAL Oversight Committee similar to that in North Dakota, which utilizes a seven-member GAL Review Board whose members are appointed by the Chief Justice and which is based out of the State Court Administrators Office.[48] The Oversight Committee would oversee the

[46] *See supra* note 44 for states addressing factors to consider in appointing a GAL.
[47] For examples of a Code of Ethics, *see* Superior Court of District of Columbia: Practice Standards for Guardians ad Litem, *available at* https://www.dccourts.gov/sites/default/files/2017-09/Order14-01-GALPracticeStandards.pdf (archived at https://perma.cc/N6NA-4FGD); *also* see State of Connecticut Code of Conduct for Counsel for The Minor Child and Guardian ad Litem, *available at* https://www.jud.ct.gov/family/GAL_code.pdf (archived at https://perma.cc/8RCD-BYVZ).
[48] *See* N.D.R. Juv. P. Rule 17; for other review boards for GALS, *see* Minnesota Guardian ad Litem Board, https://mn.gov/guardian-ad-litem/program-information/complaint-procedure.jsp (archived at https://perma.cc/72XZ-FLQK); *see also* Maine Guardian ad Litem Review Board, https://mebaroverseers.org/regulation/bar_rules.html?id=653490 (archived at https://perma.cc/Y7K5-5LKH).

criminal background checks of GALs as well as ensuring training requirements are followed. The Oversight Committee should be comprised of members of the judiciary, family law practitioners, the State Director of CASA/GAL, and practicing GALs.

The Oversight Committee would also accept complaints. Complaints would not be investigated on a GAL during a pending case; instead, complaints should be submitted 60 days after the issuance of the Order which included consideration of the GAL recommendations and report. The actions of the GAL would be reviewed only for compliance with the GAL Guidelines and Code of Ethics. The Oversight Committee would decide whether to dismiss the complaint or investigate. If an investigation is conducted, a copy of the complaint will be provided to the GAL with a request for a response within 30 days. The Oversight Committee will issue a written resolution within 60 days. At the conclusion of the process, the Oversight Committee will determine if a complaint is founded and what actions, if any, should be taken. Failure to meet with and observe the child will automatically result in a founded complaint.

Founded complaints will result in notification to the presiding judicial officer in the county in which the case was heard that a complaint has been founded and the grounds for the complaint and determination. Founded complaints will also be maintained by the Oversight Committee. Repeated complaints may result in the removal of the GAL from the proposed Indiana Registry of GALs in good standing. (See Recommendation #15 on creation of a proposed Indiana Registry for GALs and PCs.)

Concerns about a GAL during a pending proceeding must be handled by the parties, or their attorneys, by way of motions or cross-examination; the Oversight Committee cannot review a case where the issues of fact are pending before the court. The Oversight Committee is prohibited from reviewing the court's decision or actions in the case. Only the Judge has the authority to remove the GAL from an existing case. However, a GAL with a founded complaint will not continue to serve on the case in any additional proceedings and must agree to withdraw from the case.

III. Training Proposal for Rollout of New GAL Guidelines

There is a serious shortage of available GALs to serve in family law cases across the state, especially in some counties. To create a cadre of well-trained GALs across the state who are available to the courts in family law cases, the FLT makes the following training proposal.

After the GAL Guidelines are adopted, training on the new GAL Guidelines should be offered for free (with CLE and Social Worker education credits) in exchange for GALs agreeing to take two cases in the counties where they are willing to serve as a pro bono GAL. The list of GALs who have agreed to take two cases pro bono will be distributed to the judges in the counties where the GALs intend to offer their services.

To increase the number of people who can serve as GALs and who are well-trained, two training curriculums could be offered. The first training would be offered to people who already have

experience serving as a GAL and would cover the new GAL Guidelines, Code of Ethics, advocating for the best interests of children, and other topics for experienced GALs. This would be a full-day training and would be offered for free in exchange for a GAL handling two cases pro bono. This training could be offered in different areas of the state so GALs who will take pro bono cases are available statewide.

The second training would be offered to attorneys and eligible non-attorneys who want to learn how to serve as a GAL in family law cases but have not previously done so. This would also be a free training designed to create additional, qualified GALs. This training would be a two-day training and would cover the GAL Guidelines as well as an overview of the role of the GAL, the applicable laws and statutes and other information needed to be an effective GAL. Judge Tavitas and Kids' Voice of Indiana have already created and presented a curriculum in Lake County that can be updated and implemented for this initial GAL training.

Once the GALs have received the training on the GAL Guidelines and/or the initial training for new GALs, their names can be added to the new statewide GAL Registry. The Registry will be available to both courts and litigants so that GALs are more readily available in all counties.

IV. Other Recommendations Regarding GALs

As noted above, the GAL subgroup supports the FLT recommendation that a Statewide Directory of GALs and PCs be added to the Mediator Registry. This directory should be searchable and should include which counties a GAL will take cases in and other relevant information.

The FLT also recommends the development of a resource guide for parents that defines the role of a GAL and how parents can work with GALs. This guide could be given to parents by the courts and would help parents understand the GAL's role and help set reasonable expectations and avoid confusion. The resource guide could also include a section on what a parent can do if they disagree with the GAL report. There are samples of these guides from other states that can be used to develop a guide for Indiana.

The GAL subgroup also supports the recommendation of the FLT to make statutory changes to the existing GAL statutes to clarify the role of the GAL in guardianship, adoption, and other types of family law cases not currently included in the existing statutes.[49] These statutory changes will ensure consistent practice in all types of family law cases.

[49] For example, I.C. § 31-17-2-12 and I.C. §§ 31-17-6 are statutes which apply to GAL practices in dissolution of marriage cases. These statutes cover a GAL appointment, civil immunity, a GAL's role, a GAL's investigation, the submission of a GAL report, and other GAL matters. However, there are no analogous statutes in the paternity code (I.C. §§ 31-14), in the guardianship code (Title 29, which only provides for the appointment of a GAL but provides no other guidance), in the adoption code (I.C. §§ 31-19, which only provides for a GAL appointment in postadoption contact cases) or other family law cases.

Finally, the FLT researched how other states pay for GAL services; most states charge the parties. The GAL subgroup supports the ADR subgroup recommendations that a funding source be developed to pay for GAL services on a sliding scale by amending the ADR statute, I.C. § 33-23-6-2(d) to allow the ADR fund or portions of the fund to be used to pay for GAL services.

This recommendation incorporates FJI Principle 1, Direct an Approach the Focuses on Problem-Solving; Principle 2, Involve and Empower Parties; and Principle 4, Provide Information and Assistance.

7. Family Problem-Solving Court

The Family Law Taskforce supports exploring how a problem-solving approach, similar to that used in problem-solving courts, could be implemented in family court.

Family courts are faced with complex family issues and must problem-solve on a daily basis. The first principle of the FJI principles for family justice reform is to direct an approach that focuses on problem solving. All family courts should be utilzing a problem-solving approach and teaching the parties cooperation and problem-solving skills throughout the life of the court case. The FJI recognizes that the "problem-solving mindset provides the contours of the process around which courts should manage domestic relations cases."[50]

Indiana statutes provide a definition for problem-solving courts. See *I.C. §§ 33-23-16.* Under the statutory definition, a problem-solving court is a court providing a process for immediate and highly structured judicial intervention for eligible individuals that incorporate the following problem-solving concepts:

1. Enhanced information to improve decision making.
2. Engaging the community to assist with problem solving.
3. Collaboration with social service providers and other stakeholders.
4. Linking participants with community services based on risk and needs.
5. Participant accountability.
6. Evaluating the effectiveness of operations continuously.

[50] Family Justice Initiative, *Principles for Family Justice Reform* 3 (2019), https://www.ncsc.org/__data/assets/pdf_file/0021/19173/family_justice_initiative_principles_final.pdf (archived at https://perma.cc/PHK5-KZP7).

Indiana has multiple problem-solving court models, including family recovery courts, drug courts, mental health courts, reentry courts and veterans courts. However, involvment in a family court case in not on the list of eligibilty criteria listed in the statute for a problem-solving court.[51] There is currently no model for complex, high-conflict family law cases that involve issues such as domestic violence, substance use, child abuse, and other similar concerns.

Building from the problem-solving court model, a problem-solving approach for family law cases could be used in conjunction with the Triage pathways, in particular, the Judicial Specialized pathway. This pathway is appropriate for cases that necessitate substantial court-based or community services and resources to reach a resolution. They are typically cases in which the parties cannot or should not problem-solve without court intervention and supervision because they involve complex issues or a high level of conflict. The goal of the Judicial Specialized pathway is to tailor resources, services and judicial involvement to the needs of the case and the parties.

Teaching the parties cooperation and problem-solving skills throughout the process is important and can have a life-long impact. The problem-solving approach helps to fill the gap between families who cannot co-parent after separation or divorce and the families with open investigations through the DCS.

Another problem-solving tool that can be used by family law courts to help families when the courts do not have the resources for intensive case management is Community Partners for Child Safety (CPCS).[52] This is a statewide prevention program offered by the DCS that is designed to strengthen the family unit and build support services. It is voluntary, free, and provides home-based services to connect families with resources. CPCS is specifically for families that do not have an open case with DCS. The FLT had a presentation by DCS about CPCS and how to access these services.

The FLT encourages all courts to explore a problem-solving approach to resolve high-conflict cases, help address issues in the family that interfere with parenting time, and help parents access the resources and services they need to have better outcomes for the family. This recommendation incorporates FJI Principle 1, Direct an Approach that Focuses on Problem Solving, Principle 2, Involve and Empower Parties, Principle 4, Provide Information and Assistance, and Principle 8, Judicial/Specialized Pathways.

[51] *See* I.C. § 33-23-16-13.

[52] More information about Community Partners for Child Safety is available at DCS: Community Partners for Child Safety (in.gov) (archived at https://perma.cc/L7QH-YWPP).

8. Self-represented litigant videos

The Family Law Taskforce does not recommend updating the Supreme Court's self-represented litigant videos at this time.

In the FLT Preliminary report, the FLT recommended updating the Supreme Court's SRL videos created in 2008. These videos were costly to produce and are outdated. For example, the videos do not include any reference to e-filing. In recommendation number 5, regarding Resources for SRL, it is noted that the CCA is creating guided interview forms for SRL. The guided interview forms involve instructional videos to aid the user in completing the actual forms. Rather than creating a separate SRL video, we recommend partnering with the CCA to determine if any additional videos are needed to complement the existing projects they are implementing with the guided interview forms and the SRL toolkit.

The FLT also recommends developing a script for a short opening video to be read by the Chief Justice or possibly all Indiana Supreme Court Justices that could be on the Indiana Help website and could address SRLs and the resources available to them. This video would help send the message to SRLs that our Indiana Supreme Court recognizes the needs of SLRs and is making resources available to help them obtain justice. This type of short video would require significantly fewer financial resources but would provide an important public service message from our Supreme Court.

9. Order Banks

The Family Law Taskforce recommends the creation of a family law order bank with template form orders for judges.

Family court judges spend a significant amount of time writing detailed and case-specific orders. Uniform template orders would assist judges with generating orders quickly that contain accurate language to comply with state law requirements. This would be especially helpful for new judicial officers, senior judges, and judicial officers exercising jurisdiction over multiple areas. The orders could be created in open court and given to litigants at the conclusion of the hearing or shortly thereafter, which is extremely helpful to the parties and to the expeditious resolution of the case.

The Domestic Relations Benchbook has sample wedding vows and a sample order appointing an attorney as *pro tem* to conduct weddings, but no other order templates for family law cases. Odyssey

contains some order templates, but the FLT believes that they are not regularly updated or widely used.

FLT members met with the IOCT to discuss what type of technology or application could be utilized to implement an order bank. It was determined that an order bank could be best utilized if it were part of the online Domestic Relations Benchbook or part of a separate order bank in INcite. IOCT has indicated that the orders could interface with Odyssey such that the correct case number and party names could be generated on the form, and the form could still be customized by the judge.

The family law order bank could include a/an:

- Provisional Order
- Dissolution Decree with Children
- Dissolution Decree without Children
- Paternity Decree
- Modification of Child Support
- Emancipation and Termination of Child Support Order
- Contempt Order for Nonpayment of Child Support
- Contempt Oder for Other Matters

The sample form orders should be reviewed on an annual basis to ensure appropriate revisions as laws change. Use of the Order Bank should be included in ongoing judicial officer training and part of new judge school for those with family dockets.

If there is an ongoing implementation group that derives from the FLT, this group could develop the needed orders for the Order Bank and then send them to the Domestic Relations Committee for their approval. Once approved, we recommend these forms be available to judges and that they receive notice and training on their existence.

This recommendation incorporates FJI Principle 9, Training and Stakeholder Partnerships, and Principle 13, Implement Innovative and Appropriate Technology.

10. Text Message Hearing Reminders for Non-Attorneys

The Family Law Taskforce recommends piloting text message reminders in family law cases.

A common problem described by the FLT members is the failure of self-represented litigants to appear at scheduled hearings. This results in wasted judicial and legal resources and delays resolution of the case and of justice.

Currently, text message reminders are generated for defendants in criminal cases as a courtesy reminder of an upcoming hearing in Odyssey courts. This project, which began in May 2018, was started with the goal of reducing the number of people who fail to appear in court and the number of warrants issued. Research shows that text messaging is the "most prevalent form of communication for Americans younger than 50."[53] The text message reminders do not replace official notification from the court of the hearing and counties must opt in to use this option.

Currently, the text message hearing reminder process works by checking for a cell phone number on the criminal defendant's party record in Odyssey. Two text messages per hearing are sent to that cell phone number, five days and one day prior to the next hearing. If the hearing has been rescheduled or cancelled within five days of the scheduled hearing, a text reminder will be sent notifying the defendant of the change to the hearing. Confirmation of the text message being sent is not added as an event to the case in Odyssey because it is not an official notice. Defendants are given a chance to opt out and not receive the text messages. Clerks and court staff can look up whether text messages were sent to a particular defendant or phone number in INcite.

The FLT proposes expanding the text message reminder process from only defendants on criminal cases to petitioners and respondents on DC, DN and JP cases. The process would work similarly to criminal cases; a text message reminder is sent five days and one day before an upcoming hearing to parties on the case with cell phone numbers in Odyssey. The FLT believes expanding text message reminders to DC, DN and JP cases will result in more litigants appearing for their hearings in family law cases because of the positive impact that text messaging has had on defendants appearing for their criminal hearings. Making multiple attempts to contact a defendant about a hearing has been shown to increase the likelihood of a defendant appearing in court.[54] Also, the application of text

[53] Frank Newport, *The New Era of Communication Among Americans*, Gallup, Nov. 10, 2014, at https://news.gallup.com/poll/179288/new-era-communication-americans.aspx (archived at https://perma.cc/KF9G-S673).
[54] Minnesota Judicial Branch, Hearing eReminders at https://www.mncourts.gov/Hearing-eReminders.aspx (archived at https://perma.cc/UW2N-KBL6?type=image).

messaging has been identified by the Institute for the Advance of the American Legal System (IAALS) as one of the most promising customer-serving technologies.[55]

This recommendation is consistent with Principle 13 of the Principles for Family Justice Reform which suggests that "courts should deploy innovative and appropriate technology solutions whenever possible to assist domestic relations parties."[56] Text message hearing reminders should be one of these technologies.

The Technology Working Group is also working on a proposal to increase the use of text messaging to remind litigants of court hearings. The FLT supports their proposal and recommends expanding the use of text reminders to include family law cases. Implementation requires clerks and/or courts to collect cell phone numbers from litigants, as well as obtaining their permission to provide hearing reminders by text. It will be necessary to identify a process for collecting the cell phone numbers from family law litigants and to obtain their permission. The FLT is working with the Technology Working Group on ways to implement this proposal. This recommendation incoporates FJI Principle 2, Involve and Empower Parties; Principle 4, Provide Information and Assistance; and Principle 13, Implement Innovative and Appropriate Technology.

11. Create a Financial Declaration Form through Guided Interview Application

The Family Law Taskforce recommends the creation of a web-based, uniform financial declaration form through a guided interview.

The web-based financial declaration calculator would allow for input of assets and debts by each party through a "guided interview" process. The completed form would be reviewed by the parties, the mediator (if applicable), and/or the court. This tool would streamline the discovery process, offer a standard financial summary to Judges even in cases with SRLs, and offer consistency across counties.

[55] John M. Greacen, Eighteen Ways Courts Should Use Technology to Better Serve Their Customers, IAALS, the Institute for the Advancement of the American Legal System 19 (Oct. 2018), https://iaals.du.edu/sites/default/files/documents/publications/eighteen_ways_courts_should_use_technology.pdf (archived at https://perma.cc/UQR7-9T9S).

[56] Family Justice Initiative, *Principles for Family Justice Reform* (2019), https://www.ncsc.org/__data/assets/pdf_file/0021/19173/family_justice_initiative_principles_final.pdf (archived at https://perma.cc/PHK5-KZP7).

Each of the parties to the case (or their attorneys, if represented) could access the financial declaration form application by going to the Indiana Supreme Court website, similar to the process for accessing the child support calculator. Just as the child support calculator has been successful at providing a uniform approach to calculating child support, so too could a uniform financial declaration form. The application would be easy to use for self-represented litigants, as well. The application would allow for saving the completed form and could be amended and accessed by permission. The following is an example for how the application might be developed, however, this is only an illustration.

Step 1: Initial Input

A. Parties (or their attorneys) go to the tool, log in with the case number, identify as Petitioner or Respondent, and create a password.
B. Parties (or their attorneys) then answer a series of questions about all assets and debts, including date of valuation, method of valuation, and amount of value. Every asset or debt will be on its own row.
C. Parties (or their attorneys) upload corresponding documentation.

Step 2: Sharing the Data

A. Once the data is complete on one side, the parties (or their attorneys) select a button to share data with the other party.
B. The application merges the two lists of assets and debts, identifying possible overlaps, and allowing each party to confirm or dismiss any merging of entries.
C. Once the combined list is approved by both parties, or items of disagreement are listed as alternates, the Financial Declaration Form is complete.

Step 3: Allocating the Assets and Debts

A. The parties can use the data to negotiate. Each row will have a button where a party can adopt or reject the allocation of the other party. Once there is agreement on all rows, the parties can e-sign and generate a printable (PDF or hard copy) version for submission to Court with their agreement.
B. If the parties mediate, the mediator can log in to the applicator, using the case number, mediator number, and creating a password. The mediator can allocate assets or debts to create proposals and reflect party proposals. Once there is agreement on all rows, the parties can e-sign and generate a printable (PDF or hard copy) version for submission to the Court with their agreement.
C. If the parties go to Court, the Judge can log in, using the case number, attorney number, and creating a password. The Judge can see the list of assets and debts, and whether there is agreement to each, but no other history of settlement negotiation. The Judge then allocates assets and debts to create the final order and includes it with the Decree.

IOCT has developed software to create the guided interview financial declaration form; however, several other projects are ahead of this on the schedule. FLT hopes that FLT members or others implementing the FLT recommendations can give input to further develop this tool. This recommendation incorporates FJI Principle 2, Involve and Empower Parties, Principle 4, Provide Information and Assistance, and Principle 13, Implement Innovative and Appropriate Technology.

12. Update the Indiana Parenting Time Calendar

The Family Law Taskforce recommends updating the Parenting Time Calendar.

Since being offered, the online Indiana Parenting Time Calendar has been well-received, especially by judicial officers and family law practitioners. However, the existence of the calendar is not widely known, and its use is limited to cases using IPTG for children over 3 years of age. The FLT offers the following recommendations to increase its capabilities. It is our hope that these changes would increase its use as a free resource for parties involved with the courts. It is also a tool to avoid conflict for ongoing use once custody has been established. The calendar could also prove extremely helpful to mediators, GALs, and PCs.

In our research, no other online calendar of this type was found in other states. Other states mostly offer sample parenting time plans depending on the age of the child and other circumstances. These calendars are mostly in PDF format and are not interactive like Indiana's calendar.

We have organized our recommendations by priority. These are the recommendations the FLT would like to see implemented first:

- The calendar is currently defaulted to IPTG; we would like to add in a dropdown menu to choose other possible schedules:
    - IPTG when distance is a factor
    - 50/50 or other joint arrangement
    - Under age 3
    - Custom Parenting Time schedule
- Encourage other uses for the calendar such as the ability to add in extracurricular activities, medical appointments, school conferences and other important activities or deadlines.
- Add a notice on the main screen that once a calendar is completed the number of overnights to use for the Child Support Obligation Worksheet (CSOW) are displayed at the end of the calendar. Add a link to the online CSOW calculator to use in conjunction with the calendar.

- Allow users to add in an address or location of pick-up/drop-offs (this could be an actual street address or location such as school, dad's house, etc.)
- Add capability to export the calendar to a shared online calendar, Google, Outlook, etc., that parents can view and edit on smart phones.
- Create an instruction video housed on the main page to show how to use the calendar.
- Ensure that when the calendar is printed, each month starts on a new page and the patterns and colors are visible in black and white.
- Revise the pop-up bubble so it indicates that the labels of "Mother" and "Father" only exist as a reference to which parent will be assigned Mother's Day and Father's Day to make this information more obvious; or, this information could be included in initial instructions. The purpose is to make users aware that this calendar can be used for many other family situations other than those involving one mother and one father. The instructions should also indicate that once the parties get past this initial stage of the calendar, the calendar does not mention "Mother" or "Father" again. It refers to the parties by their names.

These are additional recommendations for updates to the Parenting Time Calendar:

- Provide a function to add in contact information for other appointments, such as doctors, school activities, etc. Enable this to be printable so parents can have a list of contacts when the calendar is printed.
- Create and disseminate training on how to use the calendar for judicial officers, mediators, PCs, GALs and parents.

The FLT would like to propose these updates to the Domestic Relations Committee and seek their approval of these updates. Once the updates are approved, there would need to be a discussion with IOCT and possibly DCS about funding these updates. This recommendation incorporates FJI Principle 2, Involve and Empower Parties, Principle 4, Provide Information and Assistance, and Principle 13, Implement Innovative and Appropriate Technology.

13. Develop User Satisfaction Surveys

The Family Law Taskforce recommends that Indiana courts develop and utilize user satisfaction surveys to gauge satisfaction of litigants in family courts.

The FLT is not aware of any county in Indiana that consistently gathers user-evaluation metrics. Thus, courts are not able to learn from the users of the court system what problems they face in accessing the legal system as they try to help their children and families. FLT members have conducted research on the methods and substance of court user surveys from other states. Several

states have successfully used the National Center for State Courts Access and Fairness survey on CourtTools.[57] The FLT recommends that Indiana courts explore and implement user satisfaction surveys on a rolling basis, using a modified version of the National Center for State Court's Access and Fairness survey.[58] A survey, for example, could inquire into court accessibility, fairness, and parties' understanding of the court proceeding. Courts should use this information to improve the customer service they provide and to improve court operations.

Although a more general user satisfaction survey for family law litigants is not a top priority, the FLT recommends that we do include a user satisfaction survey for litigants who utilize ODR and for litigants who participate in a family problem-solving court pilot or a triage pilot. Surveys are neceassary to ensure that any new tools or pilots implemented are helpful and not harmful to families.

The FJI Principles highlight the importance of user surveys: "The court user is central to family justice. With an increasing number of parties in family and civil cases engaged in the court process without attorneys, courts must embrace a customer service mindset. This mindset should extend to data collection. Courts should be striving to meet the needs of the constituency rather than telling them what their needs are or merely providing services that meet only a small portion of their needs. Accordingly, courts will need to gather information to be able to assess whether constituent needs are, in fact, being met."[59] This recommendation incorporates FJI Principle 12, Collect and Analyze User Evaluation Metrics.

14. Parenting Classes

The Family Law Taskforce recommends the development of consistent, research-informed parenting classes.

The FLT has learned through its work that there is a great deal of variation in whether local courts in Indiana refer family law participants to parent education programs, as well as which programs local courts select for referral. Typically, there is a cost to these classes, though some are offered at lower or no cost to indigent parents.

[57] National Center for State Courts, *CourTools Trial Court Performance Measures, Measure 1: Access and Fairness* (2005) available at: http://www.courtools.org/trial-court-performance-measures (archived at https://perma.cc/YBZ7-6ERA).
[58] *Id.*
[59] Family Justice Initiative, *Principles for Family Justice Reform 22* (2019), https://www.ncsc.org/__data/assets/pdf_file/0021/19173/family_justice_initiative_principles_final.pdf (archived at https://perma.cc/PHK5-KZP7).

Courts refer participants to parent education programs in the hope that these programs will improve the co-parent relationships and parent-child relationships and provide parents with the skills to navigate their parenting issues outside of court. Courts want to refer parents to programs that work. Unfortunately, it appears that most programs in use across the state are not supported by empirical research demonstrating their effectiveness in helping parents.

A review of existing empirical research of parent education programs for divorcing and separating parents supports the effectiveness of only a few longer programs (delivered over 10 to 16 weeks, historically in-person).[60] Judicial concerns about the length of these programs and their costs are certainly understandable. However, a cost-benefit analysis demonstrated that one of the longer programs more than paid for itself when considering mental health service and justice involvement cost savings.[61] Thus, even with a higher initial investment, there can be a net gain to the system.

Of course, not all parents necessarily need the longer parent education programs. Most parent education programs used in Indiana are much shorter, four hours or less, and many are offered online. Unfortunately, empirical research on shorter in-person and online programs has been disappointing to date.[62]

Given that the Indiana Supreme Court has been a leader in encouraging evidence-based interventions in our judicial system, the FLT recommends that a Working Group be constituted to do the following:

1. Review which programs are being ordered by the various courts in Indiana, how these programs are offered (e.g., format, costs), and whether these programs are supported by empirical evidence.
2. Recommend research studies of promising shorter programs (in-person and/or online) to evaluate whether these programs offer any benefits or at least do no harm (apart from the time and expense spent on programs that do not actually provide benefits).
3. Recommend research studies to evaluate the best methods for offering the longer, evidence-based programs to the families who need them, using evidence-based screening measures to inform who is sent to these programs.
4. Recommend research studies regarding the implementation of the longer, evidence-based programs, including evaluating their feasibility, effectiveness, and potential cost effectiveness. Cost effectiveness may result from improvements in family outcomes (e.g., child mental health, co-parenting effectiveness) and reductions in re-litigation and youth

[60] Compilation of Parenting Programs for the Indiana Family Law Taskforce prepared by Claire Tomlinson, Ph.D. student, Department of Psychology and Brain Sciences, Indiana University, Bloomington, Indiana. Attached as Appendix L.
[61] Patricia Herman, et al., *Cost-Benefit Analysis of a Preventive Intervention for Divorced Families: Reduction in Mental Health and Justice System Service Use Costs 15 Years Later*, PREVENTION SCIENCE 16, 586–596 (2015), https://doi.org/10.1007/s11121-014-0527-6.
[62] *Supra* note 61.

involvement in the juvenile justice system. It may be useful to consider multiple program delivery options, including offering these longer programs virtually to reduce cost. Centralizing the delivery of these online programs may be a cost-effective option if the programs continue to be as effective in this format.

5. Ensure that parenting classes include training on trauma and how it impacts children and families. The classes should also help parents learn how to resolve conflict as co-parents and to act in their children's best interest.

To support the above, FLT further recommends that the Indiana Supreme Court explore whether to seek:

1. Funds for the Working Group to retain expert advice to assist in the evaluation of the parent programs being offered in the State of Indiana.
2. After receipt and consideration of the Working Group's recommendations, funds for empirical research regarding the effectiveness and implementation of parent education programs in the State of Indiana.
3. Funds to be invested in infrastructure to support program evaluation and continuous quality improvement efforts for family law cases.
4. Funds to provide payment for court-ordered parent education programs that do not offer lower or no cost options for low or no-income families.

This recommendation incorporates FJI Principle 2, Involve and Empower Parties, Principle 4, Provide Information and Assistance, and Principle 10, Identify and Strengthen Community Partnerships.

15. Update the Statewide Mediator Registry

The Family Law Taskforce recommends updating the Statewide Mediator Registry to include Parenting Coordinators, Guardians ad Litem and family law mediators and making other changes to the Registry to make it more user friendly for courts and litigants. Courts and litigants are in need of greater access to information about mediators, PCs and GALs. This increased access is focused on assisting courts and litigants in searching and finding mediators, PCs and GALs for use in their cases. Some counties have very few people who serve in these roles and have limited access to information about mediators, PCs and GALs who are nearby and willing to travel to other counties and/or provide virtual services. Such a registry would be extremely helpful to both courts and litigants.

Indiana currently has the Roll of Attorneys that is updated annually and housed in a database managed by the Clerk of the Supreme Court. Indiana also has a Mediator Registry that includes mediators and PCs and is updated on an annual basis; it is housed in a database managed by the

Indiana Office of Admissions and Continuing Education. The Mediator Registry allows a search for PCs but only on the advanced search option.

All of the above registries are housed in different locations and do not link to each other. The geographic information for PCs and mediators provides a listing of counties from which the neutral is willing to accept cases. The registry, however, does not indicate whether the parties must travel to where the mediator's office is; whether there would be any travel expenses for the neutral to drive to the parties; or whether the neutral is willing to conduct services remotely. The current mediator/PC registry is not managed in a way that encourages or requires frequent updating. This leads to stale information as to whether the neutrals are accepting case referrals at the time the information is being accessed. Finally, Indiana has no registry or database of any kind that lists GALs in Indiana that are available to take cases; which counties they practice in; and the fees they charge. In order to facilitate the use of mediators, PCs, and GALs across the State of Indiana and to assist courts and litigants, the FLT recommends the creation of a more detailed registry as outlined here:

- In the Roll of Attorneys, provide a link to the mediator/PC registry on the main page for those looking for the other registry.
- If the family law GAL Guidelines are implemented, add in a GAL registry component as part of the mediator/PC registry so courts and litigants can also search for nearby and available GALs.
- Allow attorneys to list on their attorney registry whether they are also a registered mediator, PC, or GAL.
- Within the mediator/PC registry, eliminate the "Simple Search" tab, add "last name" and "first name" to the search terms in the "Advanced Search," and make all of the search terms optional.
- In the annual registration process for mediators, add an indicator that shows whether the mediator, PC, or GAL is currently available to accept cases and if so, in which counties. This should also be accompanied by a requirement that mediators, PCs, and GALs regularly update their availability indicator.
- Add an indicator that outlines whether mediators, PCs, and GALs will travel to other counties and what they charge for travel.
- Add an indicator that indicates what the hourly or set rate fee is for PC and GAL services.
- Update the options for mediator, PC, and GAL profiles to include if they will provide services virtually, in person, or either.

This recommendation incorporates FJI Principle1, Direct an Approach that Focuses on Problem Solving, Principle 2, Involve and Empower Parties, Principle 4, Provide Information and Assistance, and Principle 13, Implement Innovative and Appropriate Technology.

16. Statute Updates

The Family Law Taskforce recommends that changes be made to several family law statutes for uniformity, clarity, and efficiency.

Using the FJI as a framework, the FLT has presented several recommendations for improving family law procedures in Indiana. Many of these recommendations focus on strategies and technology to supplement and improve upon current practices. The FLT further recommends a thorough review of the family law statutes to provide more consistency for families across Indiana. Specifically, we recommend a small group continue beyond the FLT to build upon the review of the Uniformity Subgroup to identify statutory conflicts and statutes that are unclear or are not uniform, and, to offer recommendations as to how the statutes could be improved.

The Uniformity Subgroup examined the statutes and developed the below outline of areas that need to be clarified. In addition, included is a non-exhaustive list of other statutes that may need to be considered.

A. Statutory Inconsistencies that Need to be Addressed

A subgroup of the FLT identified multiple areas across family law where statutes addressing similar areas of law are inconsistent. Some examples of these inconsistencies include:

- **Statutes involving GAL:** The dissolution code, I.C. §§ 31-17, make detailed provisions for appointment, role, and use of a GAL; however, the paternity code, I.C. §§ 31-14, makes no mention of a GAL. Similarly, the guardianship code, Title 29, references the ability of a court to appoint a GAL, but does not make any detailed provisions regarding the role, duties, or use of a GAL. The adoption code, I.C. §§ 31-19, only mentioned the appointment of a GAL in postadoption contact cases, and otherwise makes no provisions for the appointment, use, and roles of a GAL in adoption cases.
- **Statutes regarding best interests:** The dissolution code (I.C. §§ 31-17) and the paternity code (I.C. §§ 31-14) both address custody and parenting time matters and provide for factors which inform a court's decision regarding a child's best interests. I.C. § 31-14-13-2 and I.C. § 31-17-2-8 are almost identical, except for one factor, which is found in the dissolution code but not the paternity code (whether there is a designation in a power of attorney of the child's parent, or a person found to be a de facto custodian of the child).
- **Statutes regarding legal custody:** The dissolution code (I.C. §§ 31-17) and the paternity code (I.C. §§ 31-14) again both address legal custody; the statutes almost but do not exactly

mirror each other. The paternity code adds an additional factor for the court to consider - whether there is a pattern of domestic or family violence.

- **Statutes regarding ability of custodian to determine child's upbringing:** Dissolution law and paternity law differ slightly on a custodian's authority to determine a child's upbringing. The statutes are not worded the same and provide a slightly different interpretation of when a court should place limits on a custodian's rights with respect to child rearing. These statutes are I.C. § 31-14-13-4 and I.C. § 31-17-2-17.
- **Statutes regarding restriction of parenting time:** The dissolution code, I.C. § 31-17-2-21.8, allows a court to condition a parent's parenting time on their submission to a drug test under certain circumstances. There is no analogous paternity statute.

The Uniformity subgroup identified more statutory inconsistencies beyond these examples. A more detailed list and explanation is attached Appendix M.

These inconsistencies create unnecessary confusion between interrelated and sometimes identical areas of law. Children who are born to families out of wedlock may have different statutory standards unnecessarily applied to them. Consistency across the paternity and dissolution statutes for purposes of custody and parenting time cases will enhance legal advocacy and the decision-making process for families. Consistency across all areas of civil family law (dissolution, paternity, guardianship, and adoption) will assist with subject matters such as the role and practice of a GAL, jurisdictional issues, and other items noted in Appendix M.

B. Proposed Changes to Address Statutory Inconsistencies

The FLT makes the following recommendations regarding statutory inconsistencies:

- Regarding GAL practices across all areas of civil family law, create a separate GAL chapter which explicitly applies to all areas of civil family law, and combines the existing GAL statutes into that newly created chapter.
- Regarding the statutory inconsistencies involving best interests, legal custody, ability of a custodian to determine a child's upbringing, and restrictions on parenting time, ensure that the statutes are consistent and mirror each other between the paternity code and the dissolution code. This can be accomplished either by maintaining the separate dissolution (I.C. §§ 31-17) statute and paternity (I.C. §§ 31-14) statute or could be accomplished by repealing all custody and parenting time statutes in both the dissolution and the paternity code, and all custody and parenting time statutes would be reenacted under one unified custody and parenting time code, which would apply to all custody and parenting time actions regarding a child born to parents either in wedlock or out of wedlock. Consistency regarding third party custodian situations would need to be addressed in this event, and specific provisions would need to be examined for jurisdictional consistency between this new custody and parenting time code, juvenile law, and guardianship law.

- Regarding the remaining items noted in Appendix M, the statutes should be studied by a group to determine if the inconsistencies warrant proposed legislation, and if so, how the inconsistencies should be resolved.

17. ADR Fund Plan and ADR Rules

The Family Law Taskforce recommends changes to the domestic relations ADR fund plan statute and to the ADR Rules to facilitate a broader use of ADR.

Several members of the FLT also serve on the Indiana Judicial Conference's ADR Committee. The FLT and the ADR Committee have been communicating over the last several months regarding several proposed changes to the ADR Rules. The FLT supports the current ADR Rules amendments that are before the Indiana Supreme Court. In addition, the FLT makes the following recommendations for changes to the domestic relations ADR fund plan statute found at I.C. §§ 33-23-6, and to the ADR Rules to improve family law justice.

A. Changes to the ADR Fund Plan Statute

There is no funding available for GALs in family law cases. Currently, GALs are paid for by the parties. This is a struggle for many low- income families. Our current domestic relations ADR fund plan statute, I.C. § 33-23-6-2, provides that the ADR fund plan can be used for mediation, reconciliation, nonbinding arbitration, and parental counseling. The FLT recommends amending I.C. § 33-23-6-2 to include that at least a portion of each county's ADR fund plan can also be used to pay for GALs for low-income families. Like parental counseling, a GAL can also often help lead the parties to a resolution of the case.

The FLT also recommends removing I.C. § 33-23-6-2(f), which currently states that the court may not order parties into mediation or refer parties to mediation if a party is currently charged with or has been convicted of a crime under I.C. §§ 35-42.

This unnecessarily excludes parties that could benefit from ADR services. Instead, the FLT recommends that this statute be amended to say that it is within the Court's discretion whether a party charged with a crime under I.C. §§ 35-42 is eligible for services.

The FLT also recommends an amendment to the domestic relations ADR fund plan statute to allow ADR fund plans to be organized by Judicial District, if all judges within the district agree and can agree to the allocation of the dollars. This amendment would promote and allow for mediation in more rural counties that have fewer filings.

B. Proposed Changes to the ADR Rules

The FLT worked with the ADR Committee on the proposed changes to the ADR Rules that are currently pending before the Indiana Supreme Court. The FLT supports the proposed ADR Rule amendments, which are:

- The FLT recommends amending ADR Rules 1.1, 1.3, etc., to include Parent Coordination as an ADR method with reference to the IPTG, Section V.
- The FLT recommends amending ADR Rule 1.10 to specify how to use 'other methods' to allow for immunity of the neutral; for example, "These rules shall not preclude a court from ordering parties from agreeing to use any other reasonable method or technique to resolve disputes. A court may order immunity provided by Rule 1.5 herein for the individual conducting other dispute resolution methods ("neutral"), so long as the neutral has communicated the Rule 7.3(A) disclosures and obtained any necessary consent. The parties may agree the neutral shall serve with the immunity provided by Rule 1.5 herein, provided the neutral has communicated the Rule 7.3(A) disclosures and obtained any necessary consent."
- The FLT recommends amending ADR Rules 1.2, 1.3, etc., to clarify that the ADR rules apply to non-binding arbitration only.
- The FLT recommends amending ADR Rule 2.3 to clarify that the Mediator Registry includes only counties where the mediator will work without incurring travel costs.
- The FLT recommends amending ADR Rule 2.7(F)(3) to include a Decree of Legal Separation as a document type that the mediator is authorized to prepare.
- The FLT recommends amending ADR Rule 2.7(E) to permit the mediator to state in a status report:
  - Whether a party failed to appear for mediation,
  - Whether the mediator has a conflict and, thus, cannot serve but recommends appointment of a different mediator, or
  - Whether another issue prevents the mediator from conducting a mediation in good faith and the mediator recommends termination of mediation and resolution by court hearing.
- The FLT recommends amending ADR Rules 2.7, 3.4 (E), and 8.6 to clarify that mediated and arbitrated agreements involving the care and/or support of children, or of incapacitated adults, become binding only after judicial review.

The FLT also supports the below recommendation of the ADR Committee:

- Amend Rule 1.5 to include immunity for Parenting Coordinators. The FLT supported this recommendation and the ADR Committee included it in its recommendation to the Rules Committee. However, the Rules Committee did not accept this recommendation. Despite this, the FLT discussed and believes that this rule change needs to be adopted in order to encourage more people to serve as parenting coordinators and to offer them protection similar to that which is currently offered to mediators and guardians ad litem. Based on

research, Indiana would not be the first state to provide for immunity for parenting coordinators. Arizona, Colorado, Florida, Idaho, Kansas, Louisiana, Michigan, Minnesota, North Carolina, and North Dakota have all given parenting coordinators some form of immunity. In Michigan, parenting coordinators are immune if acting within the scope of their authority outlined in the court order; whereas in Florida, they have immunity unless they acted in bad faith, with malicious purpose, or with disregard for rights, safety, and property.[63]

18. Informal Family Law Trials

The Family Law Taskforce Recommends Adoption of a Statewide Rule on Informal Family Law Trials.

A summary hearing is an informal expedited hearing particularly well-suited to provisional hearings or other narrow issues in domestic relations cases. It is ill-suited to complex fact patterns in highly contested cases when the credibility of witnesses is critical. A summary hearing is a voluntary process. Narrative statements and documents are received by the judge and the rules of evidence and procedure are waived. Summary hearings have become common in Indiana with local rules existing in a number of counties allowing summary hearings. Indiana does not have a statewide rule on informal family law trials.

However, the Indiana Supreme Court has provided some guidance on summary hearings:

> "… going forward, the collective opinion of this Court is that certain best practices would be prudent when a trial court is conducting summary proceedings. These procedures would include establishing on the record: 1) affirmative agreement from the attorneys that proceedings will be conducted summarily, for those represented by counsel; 2) affirmative agreement by both clients or unrepresented litigants to summary proceedings; 3) opportunity for both parties to add any other relevant information regarding the issues in dispute before the summary proceeding is concluded or to affirm the arguments made by counsel; and 4) an advisement in advance of the hearing that either

[63] Milfred Dale, et al., Parenting Coordination Law in the U.S. and Canada: A Review of the Sources and Scope of the PC's Authority, 58 Fam. Ct. Rev. 673 (July 2020).

> party is free to object to the form of the proceeding and request a full evidentiary hearing, upon which formal rules of evidence and procedure will be observed."[64]

The Indiana Supreme Court has upheld the use of summary proceedings, even in contempt proceedings, and emphasized that failure to object to the summary process at the trial court results in waiver of objections at the appellate level.[65]

Informal trials in family law proceedings, which are similar to summary hearings, have developed traction in four western states: Alaska, Idaho, Oregon, and Utah. A comparison of the informal trial rules in each state, and copies of each state's rule, are attached as Appendix N. The Idaho Administrative Office of the Courts completed an evaluation of informal trials in family law cases, which noted the following advantages: a less contentious process, time savings for judicial officers, cost savings for litigants, and reduction of prolonged conflict.[66] In Oregon, a study of the informal domestic relations trials noted that this is an especially helpful tool for SRLs, who are generally less capable of effectively presenting their family law case at trial because of the complexity of the rules of evidence and the trial court rules.[67] The simplified trial and hearing process was also helpful to the court so the judge could more actively engage with the parties in order to achieve fairness.

In May 2016, IAALS completed its extensive "Cases Without Counsel" research project. Among its recommendations, the IAALS report supports the Informal Domestic Relations Trial (IDRT) process, suggesting that it is a more efficient and fair process to manage cases involving SRLs.[68]

Adoption of a statewide rule on informal family trials would ensure that this useful tool is available to all counties, not just those that have a local rule allowing them. It would also ensure a consistent process for informal trials across the state. Informal trials could also be used in conjunction with Triage for those cases on the streamlined pathway (requiring minimal court resources), or the tailored services pathway (requiring more than minimal resources but still may be resolved with some alternative dispute resolution or minimal court involvement).

[64] *Bogner v. Bogner*, 29 N.E.3d 733, 734 (Ind. 2015).
[65] *Reynolds v. Reynolds,* 64 N.E. 3d 829, 834 (Ind. 2016).
[66] Idaho Planning and Research Administrative Office of the Courts, *Evaluation Report on Informal Custody Trial* (Mar. 2014). Attached as Appendix O.
[67] William J. Howe, III and Jeffrey E. Hall, *Oregon's Informal Domestic Relations Trial: A New Tool to Efficiently and Fairly Manage Family Court Trials*, 55 Fam. Ct. Rev. 70 (Jan. 2017). Attached as Appendix P.
[68] Natalie Anne Knowlton et al., *Cases without Counsel: Research on Experiences of Self-Representation in the U.S. Family Court*, INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM (2016), https://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf (archived at https://perma.cc/FA7K-KB8Z).

The FLT recommends that Indiana adopt a statewide rule allowing parties to opt-in to informal family law trials. The rule should include the minimal requirements set forth by the Indiana Supreme Court in the Bogner case discussed above. If the parties opt-in, the court would hold a summary hearing early in the case, which has the following advantages:

- The parties are able to get in front of a judicial officer quickly and a settlement often occurs on the courthouse steps.
- If a party attends and then decides to opt-out of the summary hearing, the hearing can serve as a pretrial conference and the court can:
  - discuss mediation, make referrals to services, appoint a GAL or PC if needed, and order supervised parenting time, if warranted,
  - set expectations, time deadlines, and a cooperative tone,
  - utilize triage to assist the court to determine the proper pathway for the case.

All of the attached rules (Appendix P) are quite similar and serve as examples for adopting a rule in Indiana. There are also helpful articles analyzing both the Idaho and the Oregon informal family law processes.[69] The Oregon article summarizes similar informal trial processes in Idaho, Alaska, Utah, Michigan, and Iowa.[70]

Informal family law trials are an innovative option for courts seeking to better serve the public and provide greater access to justice and procedural fairness in family law cases. The process provides a less adversarial and more user-friendly family law dispute resolution for many disputes. It is particularly helpful for SRLs who struggle to navigate the complexities of the traditional trial model. Based on the efficacy of the informal family law trial in other states, the FLT recommends that Indiana adopt a statewide rule implementing this as another tool to help courts more effectively and fairly resolve family law disputes. This recommendation incorporates FJI Principle 1, Direct an Approach that Focuses on Problem Solving, Principle 2, Involve and Empower Parties, and Principle 4, Provide Information and Assistance.

[69] Idaho Planning and Research Administrative Office of the Courts, *supra* note 67; William J. Howe, III and Jeffrey E. Hall, *supra* note 68.
[70] William J. Howe, III and Jeffrey E. Hall, *supra* note 68.

19. Final Recommendation: A Roadmap for Implementation

It is clear from the work of the FLT that much time, energy and expertise should be focused on family law matters in Indiana beyond the submission of and the Indiana Supreme Court's consideration of this report. The enormity of the reforms outlined in this report and the importance of implementing proven strategies to improve access to justice in family law cases necessitates this recommendation. The FLT and its subgroups have made incredible strides in the eighteen months since its inception to position the judicial branch to undertake further review and improvement of family law courts. The FLT has laid the foundation for additional innovative strategies, but additional efforts and input from the members of the Bar, other judicial officers, and members of the public are needed.

In Transforming our Civil Justice System for the 21st Century, A Roadmap for Implementation, it is recommended to consider creating project groups to take action.[71] Specifically, the authors recommend pilots be used to test, evaluate and gain buy-in before statewide implementation. They also recommend investment in technology and infrastructure and development of performance measures and an evaluation process.

The FLT has already identified and obtained opportunities for additional support and technical assistance to implement several of the recommendations of the FLT: (1) collaboration with CCTASSI to provide trauma training and implement more trauma-informed court processes; (2) acceptance into the NCSC SJI Implementation Lab Initiative for ODR, SRLs and Case Management/Triage; and (3) participation in a research project in Floyd County through a family court grant to assist in the creation of case management and triage pathways that can be used in courts in Indiana.

The FLT sees a need for increased collaboration and coordination at the state level to better serve families and children. The FLT recommended joint training for judicial officers on family law issues that are relevant to both family and juvenile law. However, the FLT believes that an ongoing Family Law Planning and Implementation group could be instrumental in driving initiatives that create better outcomes for families and children. This ongoing planning and implementation group could collaborate with existing judicial committees, especially the Domestic Relations Committee, and help the groups to better coordinate their work as part of an overall strategic plan. The group could help to set priorities and goals and drive a more integrated, proactive approach that would better serve families and children.

[71] Brittany K.T. Kauffman et al., *Transforming Our Civil Justice System for the 21st Century: A Roadmap for Implementation,* INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM (2017), https://iaals.du.edu/publications/transforming-our-civil-justice-system-21st-century-roadmap (archived at https://perma.cc/R7H2-KP7T).

Involvement of an ongoing Family Law Planning and Implementation group is also essential to pursue the above-described opportunities with CCTASSI and the NCSC for technical assistance, to investigate additional funding opportunities, and to participate in pilot programs and studies to implement the recommendations of the FLT. This new, ongoing group would test and evaluate promising new practices, programs and technologies and would provide the structure for the ongoing innovations and continuous improvement of Indiana's family courts.

The FJI also has a Court Readiness Assessment for Implementing FJI Principles.[72] This self-assessment tool is designed to help court leaders highlight priority areas and foresee potential barriers to implementation. The FLT recommends that the ongoing implementation group start their work by using the court readiness tool.

Above all, the FLT hopes that some type of ongoing, action-oriented implementation group can continue the momentum that was started by the FLT to implement the FJI principles, to better coordinate and integrate the various groups working with families, and to improve family law courts for Indiana's families and children.

[72] Family Justice Initiative, *Court Readiness Assessment for Implementing FJI Principles*, https://www.ncsc.org/__data/assets/pdf_file/0035/18899/fji_court_readiness_assessment.pdf (archived at https://perma.cc/5JRD-4GVU).

Appendix

Appendix A: Order Establishing the Indiana Innovation Initiative

FILED
Sep 24 2019, 3:57 pm
CLERK
Indiana Supreme Court
Court of Appeals
and Tax Court

In the Indiana Supreme Court

Case No. 19S-MS-512

Order Establishing the Indiana Innovation Initiative

Indiana has been a national leader in justice reform in areas such as evidence-based decision-making, pretrial release, problem-solving courts, and commercial courts. Additional innovation opportunities now present themselves in Indiana, designed to make Indiana's system of justice more efficient, less expensive, and easier to navigate while continuing to ensure that justice is fairly administered and the rights of all litigants protected.

Accordingly, there is hereby CREATED the Indiana Innovation Initiative to analyze research on justice reform, assess the impact of reform efforts in other states, identify innovative strategies to manage different case types, and make recommendations to the Indiana Supreme Court for best practices surrounding Indiana's justice system structures and procedures. A list of the Initiative members is attached, and the group's membership may change as its work continues.

IT IS THEREFORE ORDERED that the Indiana Innovation Initiative shall:

1. Analyze the research on justice reform;
2. Assess the impact of reform efforts in other states;
3. Identify, map, and analyze commonalities and differences in subject matter and process in criminal, civil, family, and child welfare justice systems;
4. Identify innovative strategies, such as technology, to manage different case types;
5. Develop specialized procedures for different types of cases involving differing levels of complexity;
6. Evaluate the potential and actual impacts of specialized procedures;
7. Launch pilot projects to test procedures and determine the scalable value of those procedures;
8. Collaborate with and support the Coalition for Court Access (CCA) in areas where the Initiative's work overlaps with the CCA's objectives; and
9. Make recommendations to the Indiana Supreme Court for best practices surrounding Indiana's judicial system structures and procedures.

The Initiative is additionally authorized to create subgroups needed to carry out its work. The Court now ORDERS that the first two subgroups of the Initiative shall be the Family Law Taskforce and the Technology Working Group.

The Family Law Taskforce shall consider recommendations on more efficient handling of domestic relations matters created by the National Center for State Courts, the Institute for the

Advancement of the American Legal System, the National Council of Juvenile and Family Court Judges, the Conference of Chief Justices, and the Conference of State Court Administrators. The Technology Working Group shall likewise evaluate business processes and innovative technologies in other jurisdictions, and in commercial enterprise, in preparing its recommendations.

Both the Family Law Taskforce and the Technology Working Group shall analyze the research on court reform, assess the impact of innovations in other states, identify innovative strategies for significantly improving court processes, and provide a written report with findings and recommendations to the Indiana Innovation Initiative not later than March 1, 2021. The Initiative is directed to provide a written report, with findings and recommendations, to the Court not later than July 1, 2021. The Indiana Office of Court Services is directed to assign staff to assist the Initiative in its work.

Done at Indianapolis, Indiana, on 9/24/2019.

Loretta H. Rush
Chief Justice of Indiana

All Justices concur.

INDIANA INNOVATION INITIATIVE

1. Mag. Molly Briles, Vanderburgh Superior Court;
2. Russell Brown, Clark, Quinn, Moses, Scott & Grahn, LLP;
3. Hon. Steven David, Indiana Supreme Court;
4. Mary DePrez, Indiana Office of Judicial Administration;
5. Justin Forkner, Indiana Office of Judicial Administration;
6. John Franklin Hay, Near East Area Renewal;
7. Angka Hinshaw, Marion County Public Defender Agency;
8. Hon. Matthew Kincaid, Boone Superior Court;
9. Eric Koch, Indiana State Senate;
10. Jamie Oss, Huelat & Mack;
11. Joseph Skeel, Indiana State Bar Association;
12. Chasity Thompson, Indiana University Robert H. McKinney School of Law; and
13. Michael Tolbert, Tolbert & Tolbert LLC.

FAMILY LAW TASKFORCE

1. Amy Applegate, Indiana University Maurer School of Law;
2. Debra Lynch Dubovich, Levy & Dubovich;
3. Lindsay Faulkenberg, Kids Voice of Indiana;
4. Hon. William Fee, Steuben Superior Court;
5. Leslie Craig Henderzahs, Church, Church, Hittle & Antrim
6. Michael Jenuwine, Notre Dame Law School;
7. Heather Kestian, Department of Child Services;
8. Kelly Lonnberg, Stoll Keenon Ogden PLLC;
9. Dr. Jill Miller, Northwest Psychological Services, P.C.;
10. Hon. Lakshmi Reddy, Vigo Superior Court;
11. Marilyn Smith, Indiana Bar Foundation;
12. Hon. Catherine Stafford, Monroe Circuit Court;
13. Tara Tauber, Tauber Law Offices; and
14. Hon. Elizabeth Tavitas, Indiana Court of Appeals, Chair.

TECHNOLOGY WORKING GROUP

1. Hon. Kimberly Bacon, Lawrence Township Small Claims Court;
2. Josh Brown, Cohen, Garelick, & Glazier PC;
3. Scott J. Shackelford, Indiana University Kelley School of Business and Maurer School of Law;
4. Jared Linder, Indiana Family and Social Services Administration;
5. Robert Rath, Indiana Office of Judicial Administration, Chair;
6. Hon. David Riggins, Shelby Superior Court;
7. Hon. Jeffrey Sanford, St. Joseph Superior Court;
8. Roger Schmenner, Indiana University Kelley School of Business;
9. Emily Storm-Smith, Strada Education Network, Inc.;
10. Amitav Thamba, Marion Superior Court;
11. Jeffrey S. Ton, Ton Enterprises LLC; and
12. Seth R. Wilson, Adler Attorneys.

In the
Indiana Supreme Court

Case No. 19S-MS-512

Order Adding Members to the Indiana Innovation Initiative

On September 24, 2019, this Court issued an Order establishing the Indiana Innovation Initiative and two subsidiary groups, the Family Law Taskforce and the Technology Working Group. The Order incorporated lists of members of the Innovation Initiative and its working groups, respectively. At this time, the Court has determined that it wishes to add one member, who currently serves as an elected prosecutor, to each of these teams.

IT IS, THEREFORE, ORDERED that following three members be added to the Indiana Innovation Initiative and its subgroups:

1. Mr. Jeremy Mull, Clark County Prosecutor, to the Indiana Innovation Initiative;
2. Mr. Jacob Taulman, Jasper County Prosecutor, to the Family Law Taskforce; and
3. Mr. Daniel Murrie, Daviess County Prosecutor, to the Technology Working Group.

All subsequent appointments to the Indiana Innovation Initiative and its subgroups will be approved by the Chief Administrative Officer of the Indiana Supreme Court.

Done at Indianapolis, Indiana, on 10/21/2019.

Loretta H. Rush
Chief Justice of Indiana

All Justices concur.

Appendix B: April 1, 2020 Guidance from Family Law Taskforce

(317) 232-6887
FAX: (317) 234-2985
elizabeth.tavitas@courts.in.gov

In addition to the Supreme Court's Order on custody, parenting time, and child support during the COVID-19 Pandemic, the Innovation Initiative's Family Law Taskforce proposes the following family law guidance that may assist courts or local communities.

Child Support Payments

Many county child support offices are closed or are not accepting payments in person. Child support payments can be made online, by telephone, by mail, and at other locations, as described on the Indiana Department of Child Services, Child Support Bureau website: https://www.in.gov/dcs/3504.htm. For more assistance with child support, please contact:

- Child Support Bureau Parenting Time HelpLine, 844-836-0003, PTHelpLine@dcs.in.gov
- Child Support Customer Service Center (Kidsline), 800-840-8757, www.in.gov/dcs/support.htm

Protection Orders

Electronic filing of petitions for protection order is recommended. A tutorial can be found here: https://www.in.gov/judiciary/tutorials/efile-po-efsp/#/

Additional Resources

For more information or forms for court documents, please visit:

- IndianaLegalHelp.org, for information and court forms on selected civil legal issues.
- The Indiana Supreme Court Website: courts.in.gov.
- Local county websites, linked at: https://www.in.gov/judiciary/2794.htm.
- https://www.in.gov/judiciary/5578.htm, for local orders on emergency operations.
- https://indiana.freelegalanswers.org/, for low-income Hoosiers to ask a volunteer attorney a specific question about a civil legal issue.
- courts.in.gov/efile, for information on efiling.

Appendix C: June 3, 2020 Guidelines on Resuming Operations in Family Law Cases

COURT of APPEALS OF INDIANA

INDIANAPOLIS 46204-2784
115 WEST WASHINGTON ST
SUITE 1080, SOUTH TOWER
(317) 232-6887
FAX: (317) 234-2985
elizabeth.tavitas@courts.in.gov

TO: All Trial Court Judges
FROM: Judge Elizabeth F. Tavitas,
Chair of the Indiana Innovation Initiative Family Law Taskforce
DATE: June 3, 2020

Guidelines on Resuming Operations in Family Law Cases

The COVID-19 pandemic has required courts to suspend non-essential hearings for nearly three (3) months. The Indiana Family Law Taskforce is aware of the impact this has had on parties and children in family law cases, and recognizes there are challenges in efficiently managing domestic relations cases as courts resume full operations. The Indiana Innovation Initiative Family Law Taskforce is reviewing the continually evolving circumstances and offering guidance. On April 2, the Taskforce provided Guidance on Family Law for Courts and Communities. Today, the Taskforce provides further general guidance and recommendations based on the information currently available.

1. **Consider General Guidelines**. The Office of Judicial Administration of the Indiana Supreme Court published "Resuming Operations of the Trial Courts – Covid-19 Guidelines for Indiana's Judiciary" ("Resuming Operations") on May 13, 2020, which provides detailed guidance, and should be reviewed in conjunction with this notice. *See* https://www.in.gov/judiciary/files/covid19-resuming-trial-court-operations.pdf.
2. **Use Remote Hearings Whenever Possible.** In order to promote public health and safety during the continuing pandemic, courts are strongly encouraged to minimize the number of individuals entering the county courthouse. Judges and judicial officers should conduct remote hearings in domestic relations cases as much as possible; and when not feasible or appropriate in particular circumstances, courts should allow witnesses to appear remotely to limit contact between individuals. The Indiana Supreme Court has offered Zoom licenses to all trial courts, and allows

remote hearings even when the parties object, so long as good cause is found by the trial court, which can be the continued existence of COVID-19.

3. **Provide Advance Information on Protocol.** At the time a hearing is scheduled, the courts should provide parties and attorneys their plans for maintaining social distancing, the requirement of masks, security procedures, sanitation methods, and any other helpful information that can ease the concerns of the public for their health and safety. *See* Resuming Operations at pages 12-13.
4. **Ensure Access to Digital Justice.** Courts should be mindful that not every party has reliable or available technology to participate in hearings by phone or video. Some parties may have cell phone service with a limited number of minutes available. Parties should not incur expense to participate in hearings, nor should they be required to remain on a telephone line until their case is called. Possible options for ensuring access include calling the party when their case is ready to be heard, or offering a public location for parties to use a computer or phone (such as a library, bar association, or legal assistance clinic). Courts should also consider maintaining the necessary video technology that parties can access at a remote location which provides the level of privacy required. Personal protective equipment should be available for parties to use.
5. **Schedule Cases at Specific Times.** The use of high-volume dockets, where multiple cases are scheduled each hour, or at the same time, is discouraged. Cases held in person should be scheduled at specific times to allow for proper social distancing in accordance with CDC guidelines, and to provide for adequate sanitation between hearings. As discussed above, cases held remotely should also be scheduled at specific times to prevent parties from having to use cell phone minutes or data waiting for their cases to be called. Alternatively, courts should consider "doctor's office" protocols – having parties wait in the parking lot or another nearby location outside the courthouse that permits social distancing until they are summoned to appear either by a phone call, text messaging, or pager system.
6. **Prioritize Cases.** Courts are encouraged to review the filed pleadings and case chronology to prioritize cases – especially those that must be conducted in person (due to lack of resources or necessity). Cases involving the safety and emotional well-being of children, or issues relating to domestic violence, should take priority over most other case types. After addressing emergency cases, courts should prioritize cases with statutory deadlines, such as provisional hearings, and then other non-emergency cases that were continued during the pandemic.

7. **Use Trauma-Informed Practices**. For a multitude of reasons, the pandemic has resulted in traumatic circumstances for many families and children. While there is a high volume of cases that needs to be addressed as quickly and efficiently as possible, courts should be mindful of trauma-informed practices. Courts should display patience and understanding to families during their time of crisis. Courts should provide parties with informational resources in their jurisdictions relating to domestic violence, substance use and abuse, and counseling services so that emotional, physical, and mental health needs can be addressed during this time.

8. **Triage Cases.** To expedite the resolution of domestic relations cases, and consistent with the recommendations of the National Center for State Courts' Family Justice Initiative (https://www.ncsc.org/services-and-experts/areas-of-expertise/children-and-families/family- justice-initiative), courts should consider a triage approach to assess which cases may be resolved more quickly and which cases require more extensive court time and services. A possible triage option may involve immediately scheduling a remote pre-trial conference to determine whether:

    a. the parties have an agreement, either in whole or in part, and whether they need assistance in memorializing that agreement;
    b. the parties would benefit from a referral to legal assistance organizations or resources (such as www.indianalegalhelp.org);
    c. mediation is appropriate;
    d. referral to services is appropriate (such as counseling or parenting classes); or
    e. the case involves high conflict requiring substantial court time and intervention.

    This approach may take an early investment of time, but in the long-term, could save significant court time for many cases.

9. **Strive for Uniformity.** All of the courts handling family law cases within a particular county should consider uniform rules and practices during the pandemic in order to promote efficiency and increase public confidence in the process.

10. **Encourage Language Access.** Courts must still ensure that individuals with limited English proficiency, or those who are hearing impaired, are provided necessary language interpreters, regardless of whether the hearing is in person or conducted remotely. Language line is available to all courts free of cost. Interpreters certified by the Indiana Supreme Court can be used both in person or by video. For assistance in locating a language interpreter, please contact Lun Pieper at lun.pieper@courts.in.gov.

11. **Use Technology to Increase Efficiency.** Courts should consider developing and using a paperless process that will move emergency pleadings to the judge as soon as possible. Courts should also consider obtaining the email and/or cell phone information of unrepresented litigants in order for them to receive notice quickly and electronically from the court.

Appendix D: Indiana Divorce and Paternity Filings by County, 2018, 2019 and 2020

Indiana Divorce and Paternity Filings by County - 2018

County	JP	DC	DN
ADAMS	48	61	64
ALLEN	1090	761	747
BARTHOLOMEW	168	208	197
BENTON	22	26	13
BLACKFORD	15	47	30
BOONE	134	160	165
BROWN	9	42	49
CARROLL	36	55	50
CASS	141	100	101
CLARK	233	292	312
CLAY	60	78	76
CLINTON	89	76	71
CRAWFORD	2	45	36
DAVIESS	74	72	72
DEARBORN	67	93	113
DECATUR	60	72	82
DEKALB	147	109	120
DELAWARE	220	248	237
DUBOIS	56	101	93
ELKHART	479	429	438
FAYETTE	57	54	81
FLOYD	77	269	186
FOUNTAIN	34	46	44
FRANKLIN	23	50	43
FULTON	58	71	55
GIBSON	92	104	92
GRANT	181	114	163
GREENE	76	105	110
HAMILTON	257	695	576
HANCOCK	144	171	177
HARRISON	32	101	110
HENDRICKS	194	376	325
HENRY	71	122	121
HOWARD	212	232	278
HUNTINGTON	122	82	100
JACKSON	69	122	148
JASPER	82	86	63
JAY	35	39	47
JEFFERSON	82	91	143
JENNINGS	37	109	92
JOHNSON	225	397	367
KNOX	92	111	129
KOSCIUSKO	159	164	199
LAGRANGE	55	40	41
LAKE	1247	761	910
LAPORTE	311	220	260
LAWRENCE	49	151	153
MADISON	452	296	388
MARION	2509	1749	2212
MARSHALL	88	101	99
MARTIN	10	25	25
MIAMI	39	133	128
MONROE	158	222	289
MONTGOMERY	74	83	92
MORGAN	62	217	220
NEWTON	22	21	39
NOBLE	129	104	101
OHIO	5	13	20
ORANGE	36	51	72
OWEN	46	60	83
PARKE	29	49	49
PERRY	49	53	75
PIKE	25	30	31
PORTER	334	360	305
POSEY	50	54	48
PULASKI	27	30	26
PUTNAM	60	92	98
RANDOLPH	23	77	60
RIPLEY	47	78	73
RUSH	40	48	36
SCOTT	65	64	95
SHELBY	139	118	166
SPENCER	26	40	45
ST. JOSEPH	535	501	564
STARKE	43	70	46
STEUBEN	106	82	68
SULLIVAN	19	96	59
SWITZERLAND	16	16	23
TIPPECANOE	384	323	363
TIPTON	15	32	36
UNION	11	10	13
VANDERBURGH	595	527	577
VERMILLION	35	42	53
VIGO	281	245	345
WABASH	71	79	80
WARREN	20	19	15
WARRICK	66	163	137
WASHINGTON	70	92	110
WAYNE	146	145	197
WELLS	59	55	70
WHITE	51	52	55
WHITLEY	53	81	85
STATE	**14343**	**14756**	**15850**

Indiana Divorce and Paternity Filings by County - 2019

County	JP	DC	DN
ADAMS	63	60	54
ALLEN	1015	758	801
BARTHOLOMEW	233	197	216
BENTON	14	24	16
BLACKFORD	10	39	30
BOONE	115	183	172
BROWN	24	34	41
CARROLL	47	47	45
CASS	112	114	98
CLARK	224	287	287
CLAY	58	65	77
CLINTON	110	81	87
CRAWFORD	6	35	45
DAVIESS	76	52	80
DEARBORN	75	96	127
DECATUR	74	84	70
DEKALB	138	78	121
DELAWARE	211	261	256
DUBOIS	55	84	89
ELKHART	489	423	384
FAYETTE	61	69	71
FLOYD	70	229	174
FOUNTAIN	54	42	47
FRANKLIN	33	44	54
FULTON	57	54	46
GIBSON	66	89	95
GRANT	188	141	166
GREENE	68	90	108
HAMILTON	219	653	633
HANCOCK	72	191	170
HARRISON	32	95	100
HENDRICKS	192	399	343
HENRY	82	105	157
HOWARD	207	211	267
HUNTINGTON	181	99	77
JACKSON	75	147	145
JASPER	59	85	71
JAY	39	52	59
JEFFERSON	82	70	136
JENNINGS	33	96	101
JOHNSON	256	357	391
KNOX	98	100	118
KOSCIUSKO	114	186	175
LAGRANGE	45	46	48
LAKE	1192	915	916
LAPORTE	247	245	230
LAWRENCE	64	177	142
MADISON	413	292	345
MARION	2400	1664	2459
MARSHALL	88	95	105
MARTIN	21	30	30
MIAMI	80	120	109
MONROE	161	249	284
MONTGOMERY	97	85	89
MORGAN	74	216	222
NEWTON	21	29	29
NOBLE	144	99	105
OHIO	10	9	13
ORANGE	48	55	59
OWEN	85	56	67
PARKE	26	26	35
PERRY	35	62	64
PIKE	31	33	34
PORTER	318	357	286
POSEY	43	61	67
PULASKI	16	23	25
PUTNAM	64	83	90
RANDOLPH	24	80	72
RIPLEY	64	70	63
RUSH	55	51	48
SCOTT	49	70	101
SHELBY	120	116	139
SPENCER	17	42	51
ST. JOSEPH	653	499	520
STARKE	80	47	46
STEUBEN	346	66	82
SULLIVAN	19	81	67
SWITZERLAND	13	18	34
TIPPECANOE	337	335	360
TIPTON	18	37	42
UNION	12	14	20
VANDERBURGH	1710	478	555
VERMILLION	24	38	56
VIGO	296	277	312
WABASH	51	78	95
WARREN	14	24	22
WARRICK	64	158	134
WASHINGTON	84	87	83
WAYNE	157	177	189
WELLS	68	60	56
WHITE	45	62	71
WHITLEY	52	79	76
STATE	**15582**	**14677**	**15947**

Indiana Divorce and Paternity Filings by County - 2020

Preliminary data as on 2/23/2021

County	JP	DC	DN
ADAMS	45	50	50
ALLEN	577	611	722
BARTHOLOMEW	137	159	164
BENTON	17	12	18
BLACKFORD	16	32	37
BOONE	99	181	153
BROWN	12	27	44
CARROLL	29	28	33
CASS	102	77	92
CLARK	153	257	302
CLAY	48	61	79
CLINTON	93	64	70
CRAWFORD	5	29	27
DAVIESS	58	49	67
DEARBORN	62	95	108
DECATUR	45	55	76
DEKALB	109	99	122
DELAWARE	184	206	247
DUBOIS	69	70	84
ELKHART	396	333	367
FAYETTE	43	43	44
FLOYD	69	185	164
FOUNTAIN	26	48	36
FRANKLIN	33	45	36
FULTON	38	50	45
GIBSON	53	96	98
GRANT	122	115	156
GREENE	56	87	95
HAMILTON	204	656	557
HANCOCK	113	183	180
HARRISON	33	108	105
HENDRICKS	166	359	342
HENRY	79	115	135
HOWARD	147	209	260
HUNTINGTON	138	57	96
JACKSON	75	121	148
JASPER	49	69	77
JAY	22	54	49
JEFFERSON	54	78	118
JENNINGS	36	103	105
JOHNSON	290	307	345
KNOX	67	97	109
KOSCIUSKO	154	158	176
LAGRANGE	37	50	52
LAKE	870	761	819
LAPORTE	198	177	244
LAWRENCE	49	128	143
MADISON	242	218	360
MARION	1442	1496	2156
MARSHALL	65	80	78
MARTIN	15	16	22
MIAMI	66	84	81
MONROE	140	200	238
MONTGOMERY	79	96	84
MORGAN	77	202	185
NEWTON	26	29	32
NOBLE	116	103	104
OHIO	4	10	16
ORANGE	33	45	58
OWEN	44	54	62
PARKE	22	26	41
PERRY	31	52	54
PIKE	18	27	22
PORTER	305	347	315
POSEY	33	51	67
PULASKI	27	23	30
PUTNAM	56	71	83
RANDOLPH	15	71	59
RIPLEY	31	50	54
RUSH	35	36	45
SCOTT	45	65	86
SHELBY	105	96	112
SPENCER	23	40	39
ST. JOSEPH	573	528	446
STARKE	41	45	57
STEUBEN	65	73	74
SULLIVAN	31	76	63
SWITZERLAND	11	17	32
TIPPECANOE	265	322	368
TIPTON	13	42	29
UNION	14	13	11
VANDERBURGH	502	376	454
VERMILLION	30	41	45
VIGO	272	232	253
WABASH	40	56	73
WARREN	7	20	14
WARRICK	64	121	131
WASHINGTON	65	76	61
WAYNE	153	168	188
WELLS	52	56	52
WHITE	54	54	65
WHITLEY	43	70	80
STATE	**10867**	**12928**	**14575**

Appendix E: Letter of Commitment from IOCS to CCTASSI

INDIANA
SUPREME COURT
Office of Judicial Administration

251 N Illinois St | Ste 800
Indianapolis, Indiana 46204

COURTS.IN.GOV

February 11, 2021

Cassandra Kisiel, Ph.D., and Tracy Fehrenbach, Ph.D., Co-Directors
Center for Child Trauma Assessment, Services, and Interventions
Northwestern University Feinberg School of Medicine

Letter of Commitment RE: SAMHSA FOA No. SM-21-009, CFDA No. 93.243 NCTSN Category II Center Application

Dear Dr. Kisiel and Dr. Fehrenbach,

We are pleased to provide the **Center for Child Trauma Assessment, Services, and Systems Integration** (currently known as the Center for Child Trauma Assessment, Services, and Interventions) with a commitment from the Indiana Office of Court Services to partner with you in the 2021-2026 grant period. We understand that Center for Child Trauma Assessment, Services, and Systems Integration (CCTASSI) has made a long and recognized contribution to the National Child Traumatic Stress Network by providing training and expert consultation regarding the impact of complex developmental trauma to many providers and child-serving systems across the United States. We look forward to enhancing our current trauma-informed efforts with your collaboration.

The purpose of this collaboration is to increase judicial officers' awareness, knowledge and skills in working with court-involved children and families impacted by trauma and to work toward creating a trauma-informed court system.

Specifically, CCTASSI will provide trauma-focused training and resources, consultation, recommendations, and technical assistance services that are relevant to a wide range of court staff including, but not limited to, judicial officers, court staff, guardians ad litem, court appointed special advocates, and others working with families. CCTASSI and IOCS will identify and prioritize specific approaches early in the collaboration, which will evolve over time with the goal of identifying a series of concrete steps to create trauma-informed system change.

We expect Indiana will benefit greatly from your Center's years of experience and expertise in trauma, and we are excited to be a partner in this project.

Respectfully,

Mary Kay Hudson
Executive Director

Appendix F: Providing Guidance to Library Patrons with Legal Needs

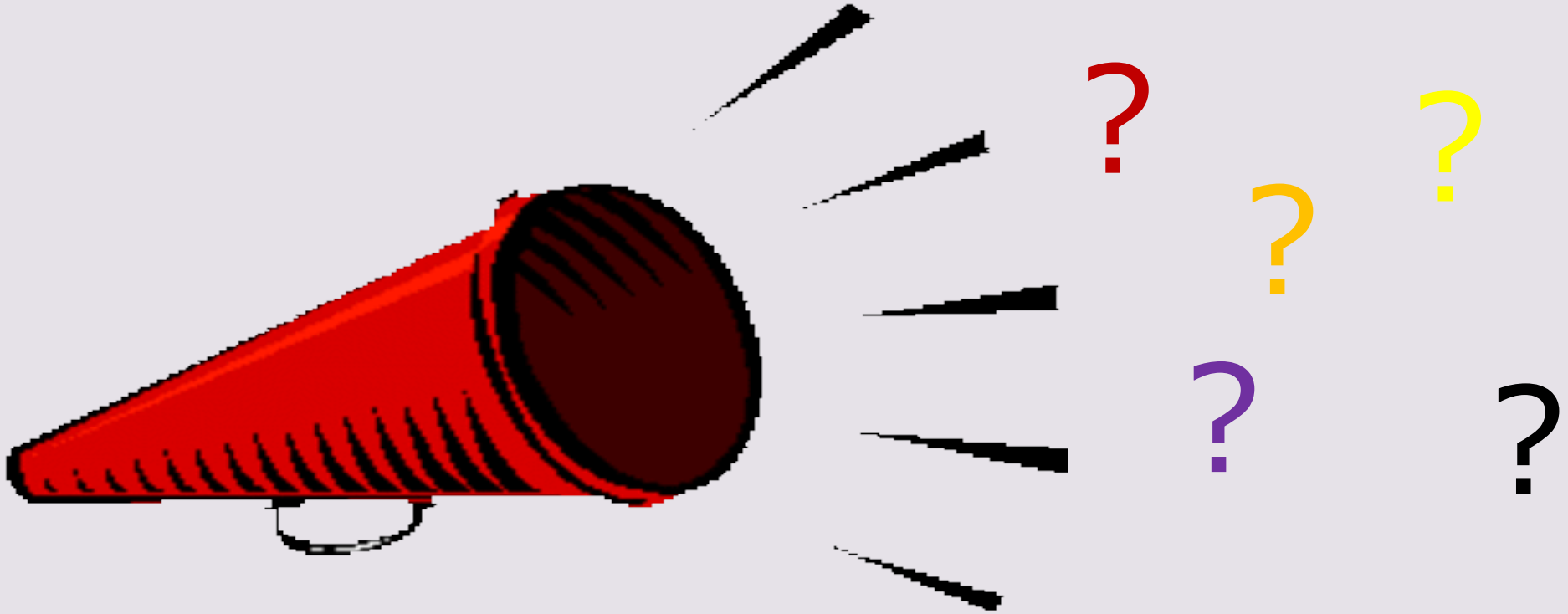
Providing Guidance to Patrons With Legal Needs

Kate Guerrero

Director, Indiana Legal Help

- Indiana Legal Help is a project of the Coalition for Court Access and is housed in the Indiana Bar Foundation.
- We receive professional support from many stakeholders across Indiana and are grateful for both financial and professional support from Indiana Legal Services.
- Indianalegalhelp.org is the nucleus of our project and it is much of what I will share with you today.
- Indianalegalhelp.org replaced much of the Indiana Supreme Court's self-help service center, and the Court links directly to our page.

SO MANY RESOURCES



1. Local Legal Help
2. Local Self Help Forms
3. National Organizations
4. Purchased Self Help Forms

Local First

- ❑ County Courthouse
- ❑ Legal Help Near You
- ❑ Ask A Lawyer
- ❑ Bar Associations
- ❑ Other Local Offices

Local Court Resources

- Referrals to self help centers and ask a lawyer
- Mediation resources
- Local court self help forms

Indiana Legal Help | Coalition for

https://indianalegalhelp.org

Not syncing

For Legal Professionals | Contact

Indiana Legal Help

Find Legal Help | Going to Court Without a Lawyer | Self-Help Forms and Resources

- Low Cost Legal Help
- Information Resources
- Hiring a Lawyer
- Ask a Question to a Lawyer

Helping Hoosiers Solve L Problems

This website helps people looking for civil legal aid. Civil legal aid helps people with non-criminal issues, including family, housing, consumer, healthcare, benefits, employment, and educational services.

COVID-19 Resources

https://indianalegalhelp.org/find-legal-help/

Type here to search

11:36 AM
11/9/2020

Information and Resources

Civil legal aid helps people with non-criminal issues, including family, housing, consumer, healthcare, benefits, employment, and educational *services*.

Most people do not qualify for free civil legal aid. Most civil legal aid and *pro bono* (free) agencies serve people who earn 125% or below of the federal poverty guideline**

2020 Federal Poverty Guidelines

Directory of Indiana Courts and Clerks

What if I Don't Qualify for Free Legal Help?

Even if you have a low income, it does not guarantee service from a legal aid or pro bono agency. Legal aid agencies have limited staff and resources and do not cover all legal issues. Pro bono agencies offer legal services for limited issues with volunteer lawyers. These agencies are not able to serve everyone who applies.

https://www.in.gov/judiciary/files/court-directory.pdf

Gibson County 13
Grant County 13
Greene County 14
Hamilton County 14
Hancock County 15
Harrison County 15
Noble County 33
Ohio County 33
Orange County 34
Owen County 34
Parke County 34
Perry County 34
Washington County 45
Wayne County 46
Wells County 46
White County 47
Whitley County 47

Adams County

Clerk's Office

James J. Voglewede, Clerk

112 S. 2nd Street, Room A
Decatur, IN 46733-1618
Pho: (260) 724-5309
Fax: (260) 724-5313

Circuit Court

Hon. Chad E. Kukelhan, Judge

Fax: (260) 449-7652

Steven O. Godfrey, Magistrate
Ashley N. Hand, Magistrate

One West Superior Street, 2nd Floor
Fort Wayne, IN 46802
Fax: (260) 449-7829

Superior Court

John McGauley, Court Executive

715 S. Calhoun Street
Fort Wayne, IN 46802
Pho: (260) 449-7681

Local Legal Help

- Some local legal aid organizations provide services to those who qualify.
- Some legal aid organizations provide help regardless of income level.

Indiana Legal Help | Coalition for

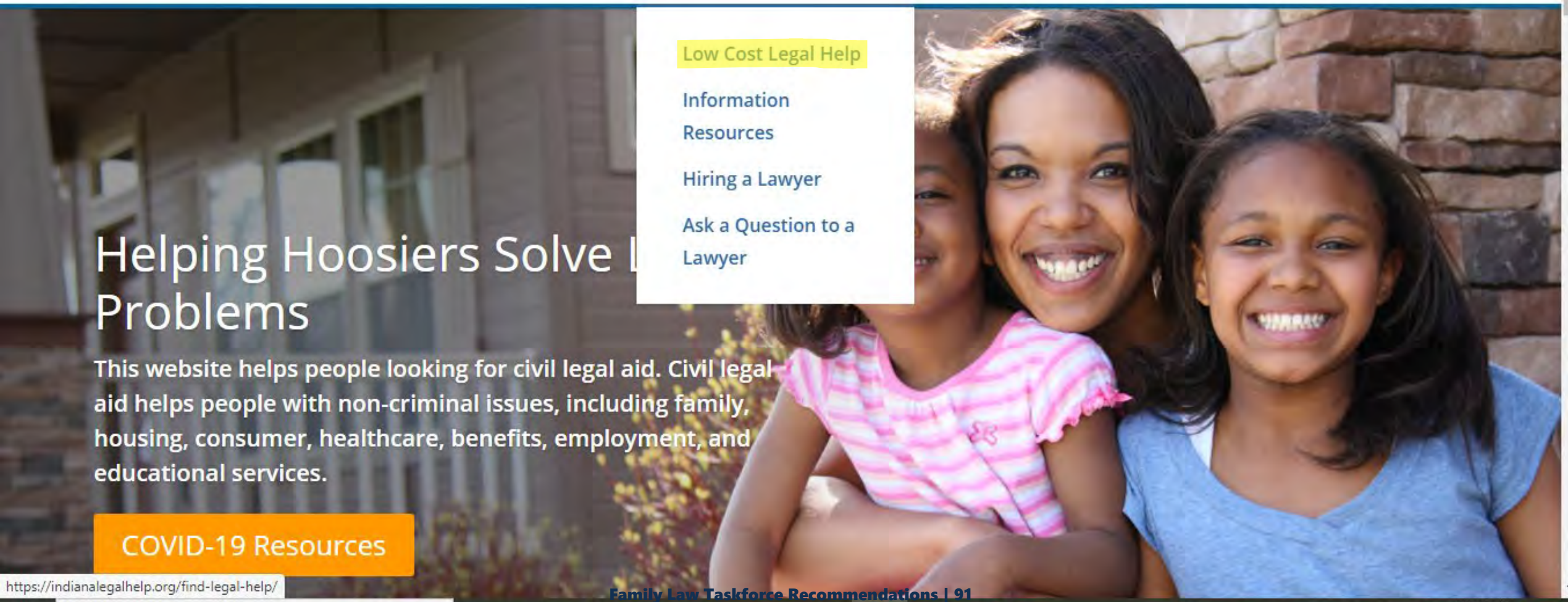
https://indianalegalhelp.org

Not syncing

For Legal Professionals | Contact

Indiana Legal Help

Find Legal Help | Going to Court Without a Lawyer | Self-Help Forms and Resources



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Legal Help Map

Indiana Legal Services - Indianapolis

Serving residents of Marion County

Assistance possible for the following legal issues: Family Law, Consumer Law, Senior Law, Housing Issues, and Public Benefits

1200 Madison, Ste. 300
Indianapolis, IN 46225
Office: (317) 631-9410
Toll Free: (800) 869-0212
(317) 631-9775 (fax)

Spanish speaking staff available

Intake Phone: (844) 243-8570
Intake Hours: Monday-Friday 10:00 AM-2:00 PM (EST)

Child Support Services

Serving residents of Indiana

Assistance possible for the following legal issues: Establishing paternity (determining the child's biological father), Finding the non-custodial parent, Establishing a child support order or making changes to an existing support order, Establishing an order for health insurance and medical support for your child(ren), Collecting child support payments, Determining the amount of past due child support

For more information, click here: Indiana DCS Child Support Services

Indianapolis Bar Association

You may be able to chat with a lawyer through

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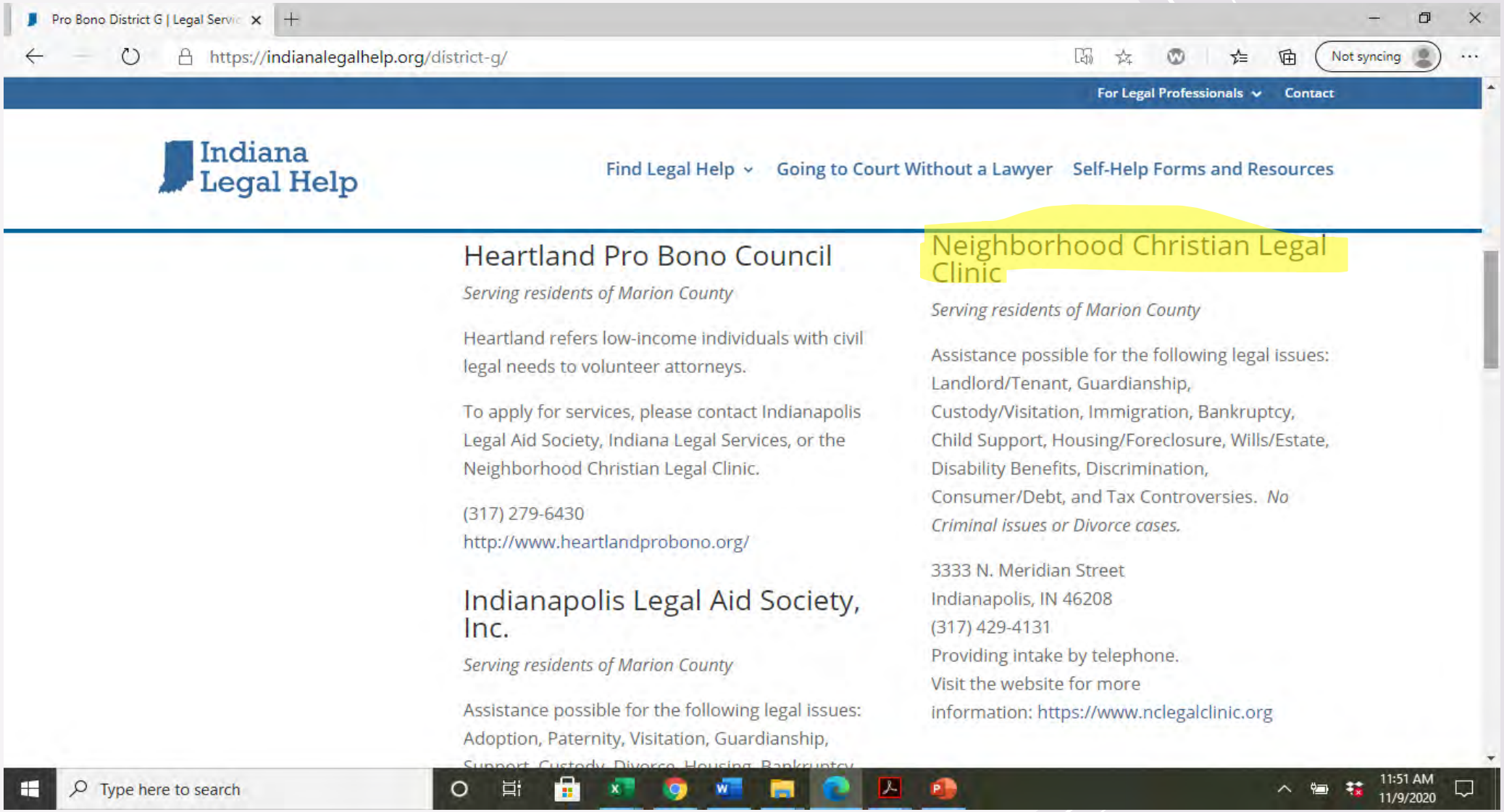
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Heartland Pro Bono Council
Serving residents of Marion County
Heartland refers low-income individuals with civil legal needs to volunteer attorneys.
To apply for services, please contact Indianapolis Legal Aid Society, Indiana Legal Services, or the Neighborhood Christian Legal Clinic.
(317) 279-6430
http://www.heartlandprobono.org/
Indianapolis Legal Aid Society, Inc.
Serving residents of Marion County
Assistance possible for the following legal issues: Adoption, Paternity, Visitation, Guardianship,
Neighborhood Christian Legal Clinic
Serving residents of Marion County
Assistance possible for the following legal issues: Landlord/Tenant, Guardianship, Custody/Visitation, Immigration, Bankruptcy, Child Support, Housing/Foreclosure, Wills/Estate, Disability Benefits, Discrimination, Consumer/Debt, and Tax Controversies. No Criminal issues or Divorce cases.
3333 N. Meridian Street
Indianapolis, IN 46208
(317) 429-4131
Providing intake by telephone.
Visit the website for more information: https://www.nclegalclinic.org
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Disability Legal Services of Indiana, Inc.

Serving residents of Indiana

Assistance possible for the following legal issues: Adults and children with disabilities who have issues in educational matters.

5954 N. College Avenue
Indianapolis, IN 46220
(317) 426-7733
(317) 282-0608 (f)
Cannot offer legal advice or answer legal questions over the phone
Visit the website to complete an intake form: http://www.disabilitylegalservicesindiana.org/

Kids' Voice of Indiana

Indianapolis, IN 46240
(317) 205-3055
(317) 205-3060 (f)
http://www.childadvocates.net/

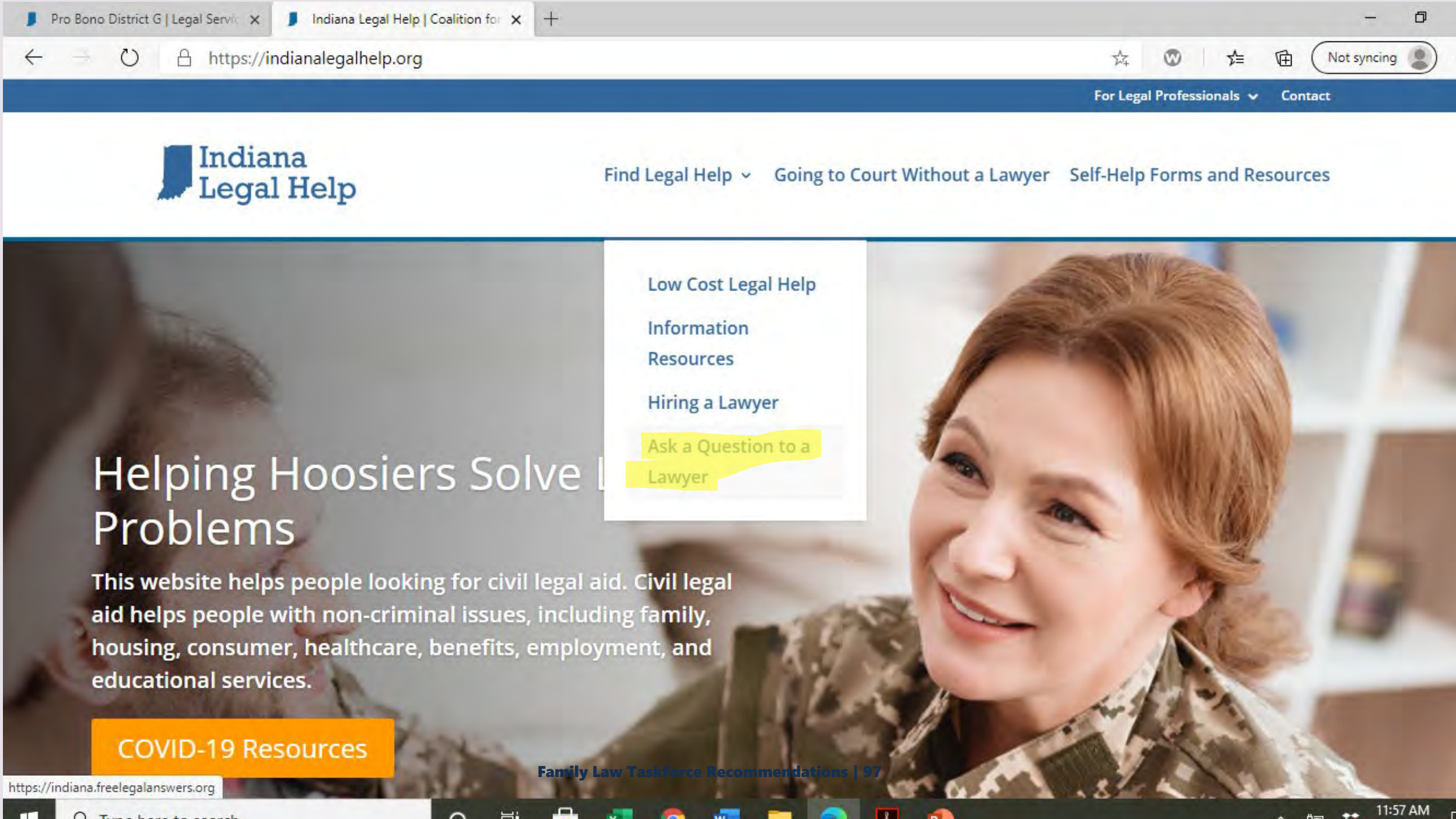
American Civil Liberties Union of Indiana

Serving residents of Indiana

Assistance possible for the following legal issues: Civil Liberties or Constitutional Rights Violations

1031 E. Washington St.
Indianapolis, IN 46202
(317) 635-4059 ext. 102
http://aclu-in.org/
Online form can be found at: http://www.formstack.com/forms/?1157118-hfibE7kI4V

ASK AN INDIANA LAWYER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Self-Help Forms and Resources
Low Cost Legal Help
Information Resources
Hiring a Lawyer
Ask a Question to a Lawyer
Helping Hoosiers Solve L
Problems
This website helps people looking for civil legal aid. Civil legal aid helps people with non-criminal issues, including family, housing, consumer, healthcare, benefits, employment, and educational services.
COVID-19 Resources
https://indiana.freelegalanswers.org
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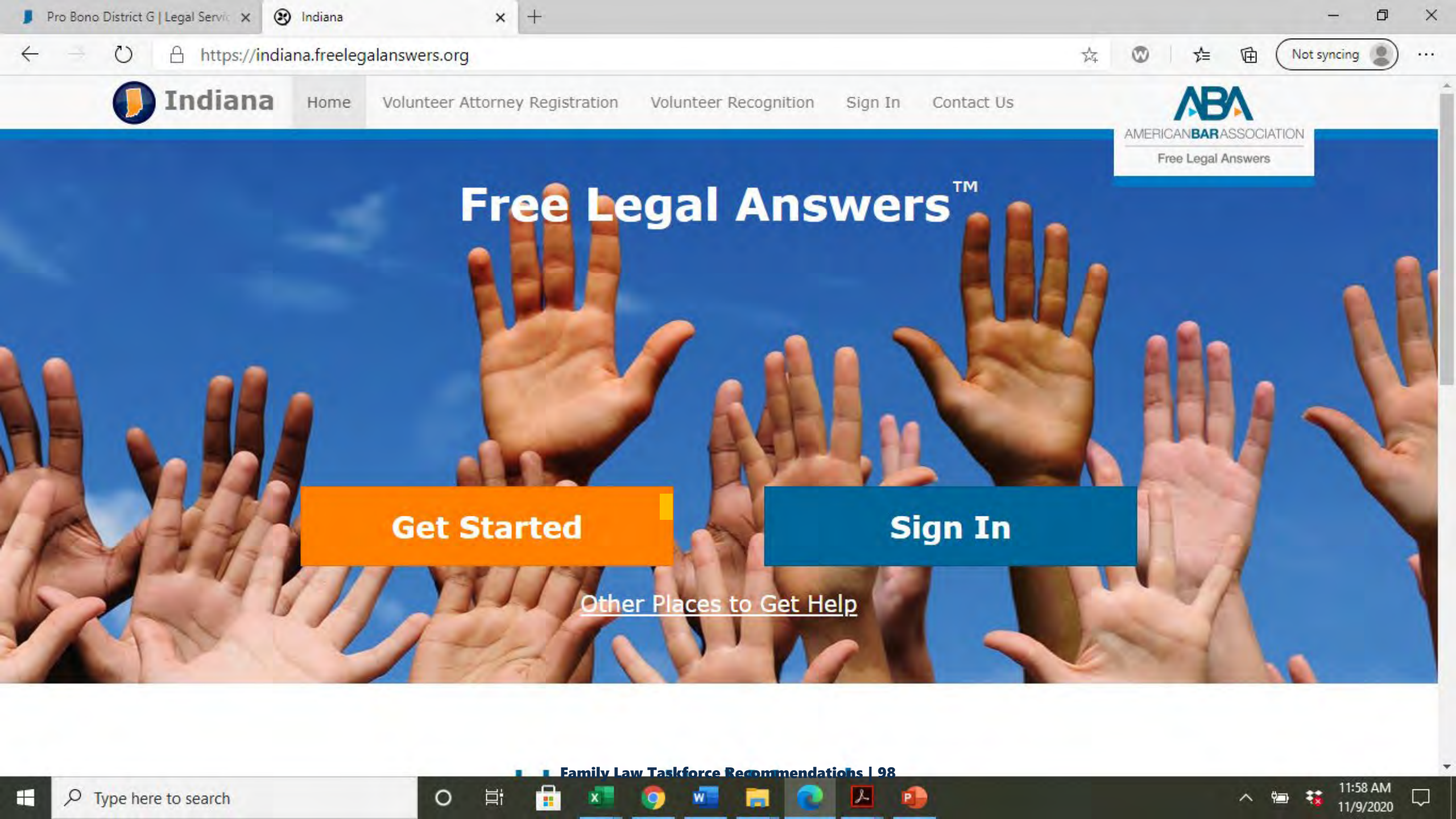
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Other Places to Get Help
Family Law Taskforce Recommendations | 98
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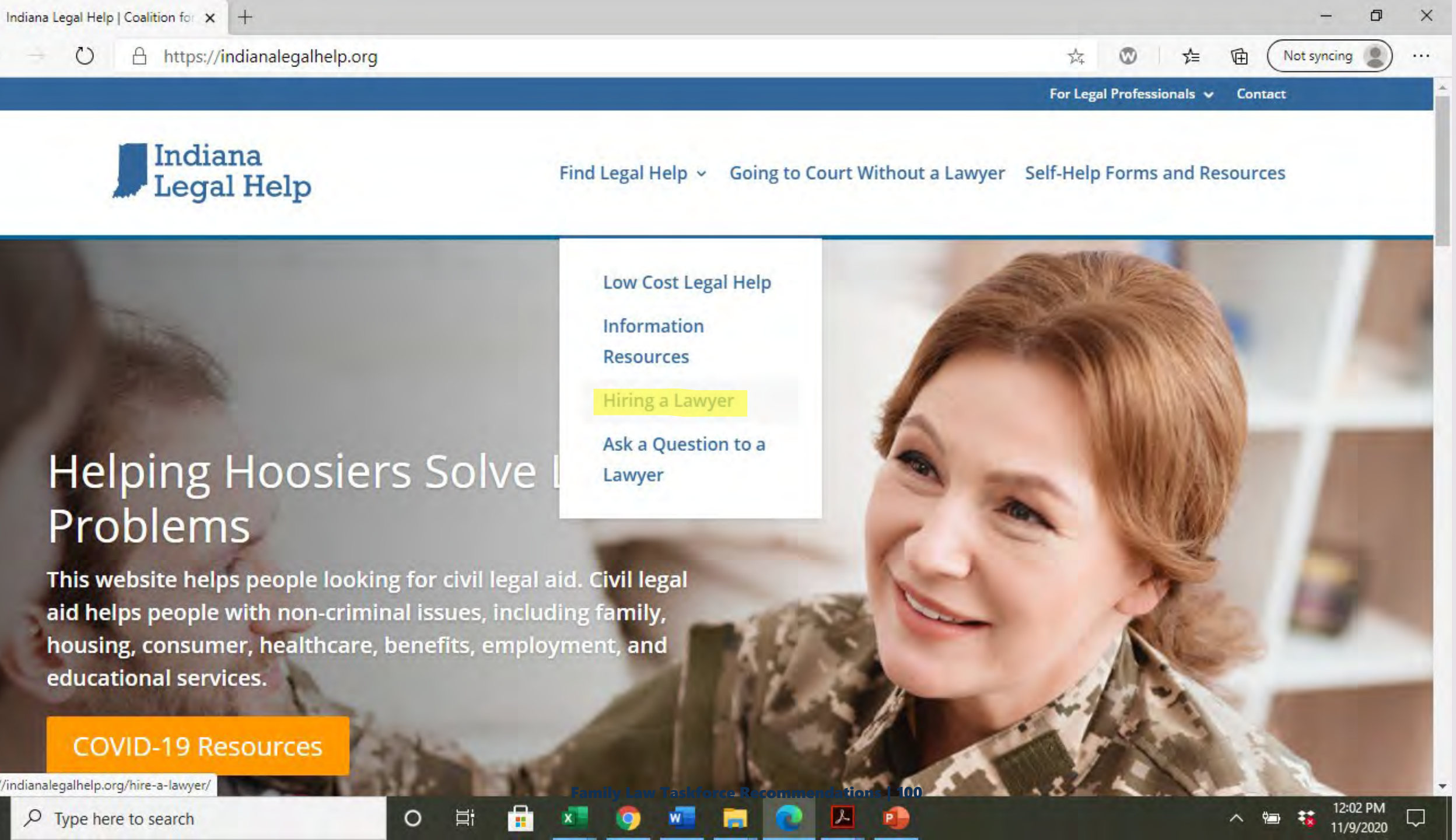
Bar Association Referrals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Self-Help Forms and Resources
Low Cost Legal Help
Information Resources
Hiring a Lawyer
Ask a Question to a Lawyer
Helping Hoosiers Solve
Problems
This website helps people looking for civil legal aid. Civil legal aid helps people with non-criminal issues, including family, housing, consumer, healthcare, benefits, employment, and educational services.
COVID-19 Resources
/indianalegalhelp.org/hire-a-lawyer/
Family Law Taskforce Recommendations | 100
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Some types of legal matters may not require you to go to court, but you still should consult a lawyer who is knowledgeable about handling your legal issue. Once you have determined that you need professional legal help, get it promptly.

Finding a Lawyer

Lawyer Referral Services

The Indiana State Bar Association has created a statewide online lawyer directory to help you find a lawyer in your area who handles your type of case.

ISBA Lawyer Referral Service

The Indianapolis Bar Association has created a local referral source for Indianapolis area attorneys. Click here: **Indianapolis Bar Association Lawyer Referral Service**. They can also provide lawyer referrals for languages other than English: Call 317-269-2222. You may also be able to chat with a lawyer through the Indianapolis Bar Association by clicking here: **Legal Line**

Lake County Bar Association Lawyer Referral Service – Call 219-738-1905.

Other Local Offices

- Recorder’s Office
- BMV
- Secretary of State
- Indiana Department of Education
- Area Agencies on Aging

Local Self Help Forms

Indiana Legal Help | Coalition for

https://indianalegalhelp.org

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Indiana Legal Help

Find Legal Help | Going to Court Without a Lawyer | Self-Help Forms and Resources

Helping Hoosiers Solve Legal Problems

This website helps people looking for civil legal aid. Civil legal aid helps people with non-criminal issues, including family, housing, consumer, healthcare, benefits, employment, and educational services.

COVID-19 Resources

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11/9/2020

2. You should always seek advice from a lawyer before filing a form or before going to court.
3. You should review this link before deciding to go to court without lawyer: https://www.in.gov/judiciary/selfservice/2361.htm
4. If you are not a lawyer and you use these forms to advise someone else on how to proceed in a legal case, you may be engaged in the unauthorized practice of law. The unauthorized practice of law is a misdemeanor in Indiana.
5. These forms do not explain the law or how the law may affect you. Only a lawyer is licensed to do that.
6. These forms may be updated or changed without notice.
7. Indianalegalhelp.org, the Indiana Bar Foundation, the Indiana Supreme Court, the Coalition for Court Access and any employees, agents, or independent contractors of these organizations assume no responsibilities and accept no liability for actions taken by users of these documents.
8. Each court may have its own procedures and these forms may not be accepted in every court.
9. Information received by Indiana Legal Help is not protected by attorney client privilege or the work product doctrine. That means that you are not a client of Indiana Legal Help and the information you share with us could be admissible in court.

I AGREE

Court Forms | Indiana Legal Help

https://indianalegalhelp.org/court-forms/

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Indiana Legal Help

Find Legal Help | Going to Court Without a Lawyer | Self-Help Forms and Resources

- Child Support
- Contempt
- Reschedule Hearing or Attend by Phone or Computer
- Divorce
- Fee Waiver
- Housing and Debt
- Paternity
- Small Estate
- Custody, Parenting Time & Relocation
- Expungement
- Driving Privileges
- Guardianship
- Protection Orders
- Name Change/ Gender Marker Change

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Parenting Time and Custody - In

https://indianalegalhelp.org/court-forms/forms-parenting-time-and-custody/

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Find Legal Help | Going to Court Without a Lawyer | Self-Help Forms and Resources

Relocation Forms | Custody Forms | Parenting Time Forms

How is child support calculated?

Any time the court is asked to change (or *modify*) child support, a new child support worksheet needs to be completed. The child support calculator can create child support worksheets for use in court. The button on the right links to the Child Support Calculator.

Child Support Calculator

Income Withholding for Child Support

Any time you ask the court to change parenting time or custody, you should bring this information with you to court: **Income Withholding**

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Parenting Time and Custody - In

https://indianalegalhelp.org/court-forms/forms-parenting-time-and-custody/

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Here is a short video to help explain how Modify Child Custody **With** Agreement forms may be completed and the options for filing the forms with the court.

CLICK HERE TO WATCH A VIDEO ON COMPLETING AND FILING FORMS

These forms can be printed and completed with handwritten answers, or they can be filled on the computer and then printed. Or, Form Helper can be used to complete these forms.

DOWNLOAD THE INSTRUCTIONS HERE

I AM READY TO FILL OUT THE FORMS

Form Helper is a tool that can be used to complete these forms. The Form Helper asks questions and uses the answers to complete the forms. The Form Helper is hosted on Community.lawyer servers.

USE FORM HELPER TO FILL OUT THE FORMS

LEARN MORE ABOUT COMMUNITY LAWYER DATA SECURITY

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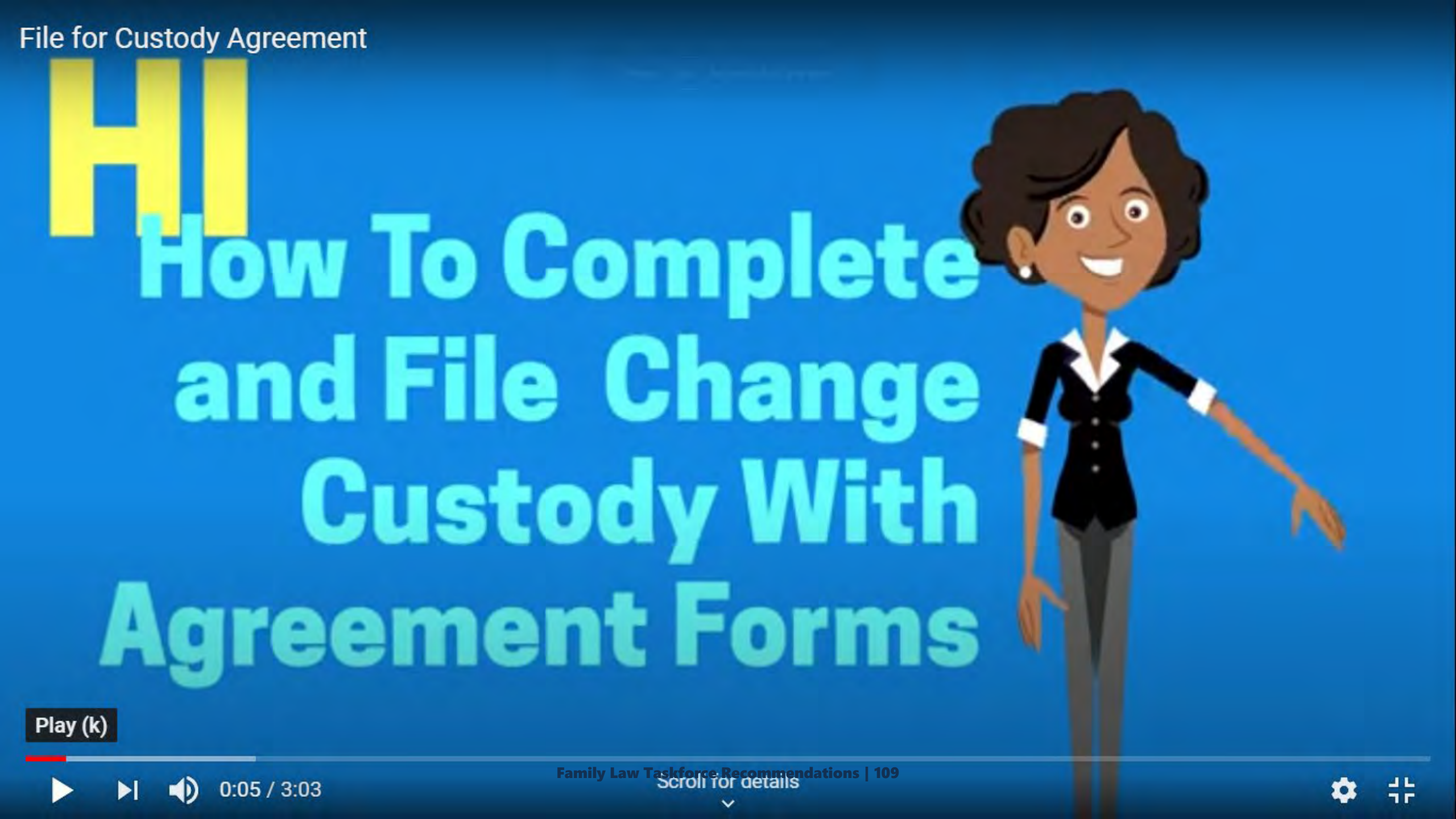
File for Custody Agreement



Parenting Time and Custody - In

https://indianalegalhelp.org/court-forms/forms-parenting-time-and-custody/

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For Legal Professionals | Contact

Indiana Legal Help

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Here is a short video to help explain how Modify Child Custody **With** Agreement forms may be completed and the options for filing the forms with the court.

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USE FORM HELPER TO FILL OUT THE FORMS

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Parenting Time and Custody - In | Modify Custody (Agreement)

https://inbf.app.law/modify-custody-with-agreement-10820-final-1/207311

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Indiana Legal Help

EXIT

BACK

Modify child custody

This guided interview will ask you questions to help you fill out the forms you need to change the physical custody of your children **when you and the other parent agree** that physical custody should be changed.

Has an Indiana court issued an order on the custody of your children? *

- Yes
- No

An order on custody may be included in your Divorce Decree or in your Decree of Paternity.

Continue

Type here to search

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National Resources

National Resources

- US Department of Education
- US Citizenship and Immigration Services
- National Guardianship Association

Appendix G: Proposed Rule on Public Assistance

Example of Proposed Court Rule on Public Assistance

(a) Purpose. The purpose of this rule is to assist court staff and other non-lawyer intermediaries in answering questions posed by a member of the public about the operation of the judicial system. The rule is intended to enable court staff and intermediaries to provide the best possible service and to provide accurate information without giving legal advice. The best suggestion to offer in many situations may be for the court user to seek the advice of an attorney. The rule does not restrict Indiana judicial district employees from performing duties authorized by law, court rule, or court order, such as collecting applicable fees or costs, or educating the public about court procedures or processes. [1]

(b) Terms and Definitions.

(1) **Legal advice** is applying a person's legal knowledge to another person's specific facts and circumstances.

(2) **Legal information** is general factual information about the law and the legal process.

(3) **Non lawyer public assistants and intermediaries** are nonlawyer volunteers and employees of entities, including courts, libraries, and domestic violence assistance organizations, whose duties include providing legal information to the public.

(c) Assistance Non-Lawyer Public Assistants and Intermediaries May Offer. Non-lawyer public assistants and intermediaries may provide legal information to the public. Information they may offer includes:

(1) Information about entities that provide free or low cost legal help including legal assistance programs, lawyer referral services, alternative dispute resolution programs, unbundled legal services and other places where legal information may be available, such as public libraries and agencies that support victims of domestic violence.[2] *Combination of Kansas, CO and Indiana*

(2) General explanation of how the court process works.[3]

---

[1] This language is based on and substantially similar to Kan. R. Acs. Jus. Comm. 1402 ("K.R. 1402"), but differs in that the purpose of this rule includes educating non-lawyer intermediaries on their role in providing legal information to Hoosiers.

[2] This is a combination of the K.R. 1402(c)(1), Colorado Self Help Chief Justice Directive 13 paragraph 3 ("CO Directive 13) and Indiana's guidance at www.in.gov/courts/selfservice/unrepresented/help/ ("IN Guidance")

[3] Based on a combination of CO Directive 13(1), K.R. 1402(d)(2) and IN Guidance.

(3) Direction to or provision of the small claims manual, court rules, the child support guidelines and calculator, the parenting time guidelines, information on legal terminology, state sponsored online legal resources and directories (e.g. mycase.com, e-filing, etc.), and legal research tools. [4]
(4) Explanation of where a person can find forms, instructions, and other resources that have been developed to comply with Indiana law. [5]
(5) Assistance in selecting an appropriate legal form, based on information provided by the customer, made available and approved by the Coalition for Court Access.[6]
(6) Review of papers for completeness, including checking for signatures and notorization.[7]
(7) Assistance in form completion by recording verbatim information provided by the self-represented person on court forms if that person is unable to complete the forms due to disability, literacy barriers or other obstacles.[8]
(8) Identification of language access resources to assist in communication.[9]
(9) Answers to questions that call for factual information—these are generally questions that start with "who," "what," "when," "where," or "how."[10]

(d) Assistance Court Employees Shall Offer. In addition to the above list of services a non-lawyer may offer, court employees shall:
(1) Provide to a member of the public information from their case file, including information as to when their next court hearing is.[11]
(2) Review papers for completeness by checking for signatures, notarization, correct county name, and correct case number.[12]
(3) Provide requested information concerning how to get a hearing scheduled.[13]
(4) Answer questions about whether an order has been issued, where to get a copy if one was not provided, and read the order to the individual if requested. [14]

[4]Based on a combination of K.R. 1402(d)(3) and IN Guidance.
[5] Based on K.R. 1402(c)(2) and IN Guidance.
[6] Based CO Directive(c)(8).
[7] Based on K.R. 1402(d)(1) and CO Directive 13(11).
[8] Based on K.R. 1402(d)(4) and CO Directive 13(9).
[9] Based on K.R. 1402(d)(6) and CO Directive 13(17).
[10] Based on IN Guidance.
[11] Based on K.R. 1402(d)(7) and CO Directive 13(21).
[12] Based on K.R. 1402(d)(1) and CO Directive 13(11).
[13] Based on CO Directive 13(16).
[14] Based on CO Directive 13(20)

(5) Provide the same services and information to all parties to an action, as requested.[15]

(e) Prohibited Acts by Non-Lawyers. Non-lawyers may not practice law in Indiana and may not do the following:
(1) Represent a litigant in court.[16]
(2) Perform legal research for a member of the public.[17]
(3) Draft legal documents for another person.[18]
(4) Lead a litigant to believe that they rerpesent the litigant as an attorney in any capacity.[19]
(5) Investigate facts of a litigant's case.[20]
(6) Provide legal advice. [21]
(7) Provide legal interpretations of laws, judicial opinions or guidelines.
(8) Answer questions that call for an opinion about what a personshould do—these are genearlly quesitons that start with "would," or "whether." [22]
(9) Advise whether or not a person should bring a case to court or give an opinion about what will happen if a case is brought to court. [23]
(10) Advise what to say in court.[24]
(11) Talk to the judge about a case on behalf of another person. [25]
(12) Tell a person what words to use in court papers.

[15]Based on CO Directive 13(23).
[16] Based on K.R. 1402(e)(1) and CO Directive 13(3).
[17] Based on K.R. 1402(e)(2) and IN Guidance.
[18] *State ex rel. Ind. Supreme Court Disciplinary Comm'n v. Taylor,* 98 N.E.3d 68 (Ind. 2018).
[19] Based on K.R. 1402(e)(4)
[20] Based on K.R. 1402(e)(6)
[21] Based on IN Guidance
[22] Based on IN Guidance
[23] IN Guidance
[24] IN Guidance
[25] IN Guidance

Appendix H: Kansas Rule and Colorado Directive

Kan. R. Acs. Jus. Comm. 1402

Rule 1402 - Providing Assistance to the Public

(a)Purpose. The purpose of this rule is to assist court staff in answering questions posed by a member of the public about the operation of the judicial system. The rule is intended to enable court staff to provide the best possible service and to provide accurate information without giving legal advice. The best suggestion to offer in many situations may be for the court user to seek the advice of an attorney. The rule does not restrict Kansas judicial branch employees from performing duties authorized by law, court rule, or court order, such as collecting applicable fees or costs, or educating the public about court procedures and processes.

(b)Terms Defined. Court staff refers to Kansas judicial branch employees and court volunteers who answer questions posed by the public.

(1) A Kansas judicial branch employee is an employee of the state of Kansas who is employed by the judicial branch and is subject to the Kansas Court Personnel Rules adopted by the Kansas Supreme Court.

(2) A court volunteer is a person who volunteers for the court by providing information to the public. A court volunteer is not volunteering as or on behalf of an attorney, law firm, or law practice and, as such, does not provide legal advice. Before participating as a court volunteer, the individual must receive appropriate training required by the Judicial Administrator.

(3) A member of the public includes a self-represented litigant who seeks information to file, pursue, or respond to a case without the assistance of an attorney authorized to practice before the court.

(c)Required Assistance. In all circumstances court staff must treat the public respectfully and provide information in a fair and impartial manner. Court staff also must provide consistent information to all members of the public, including all parties to an action. In appropriate situations, court staff must act as follows when assisting the public.

(1) Offer information about entities that provide pro bono legal services, low cost legal services, legal aid programs, lawyer referral services, and other places where legal information may be available, such as public libraries.

(2) Explain where an individual can find forms, instructions, and other resources that have been developed to comply with Kansas law.

(3) Encourage self-represented litigants to consider obtaining legal advice. Not every type of case can be competently handled by someone representing himself or herself. Some legal matters may seem simple but can actually be highly technical and complex. It may be in the best interests of a self-represented litigant to consult an attorney to determine the complexity of the case before beginning any legal process. Some attorneys will provide low-cost or no-cost initial consultations or will provide limited, low-cost assistance.

(4) Provide information about alternative dispute resolution programs, including mediation services.

(5) Provide information about court proceedings based on the assumption that the information provided by the member of the public is accurate.

(d)Permitted Assistance. When assisting the public, court staff may provide the assistance listed below.

(1) Check for completion of forms when offered for filing and explain instructions or define terms used in the forms.

(2) Provide information about court processes and procedures.

(3) Provide information regarding the existence of child support guidelines.

(4) Assist a self-represented litigant by recording verbatim information provided by the self-represented litigant on approved forms if that person is unable to complete the forms due to disability or literacy barriers.

(5) Provide information as directed by the court about local resources and programs.

(6) Identify language-access resources to assist in communication.

(7) Assist with obtaining public records that are within the custody of the court.

(e)Prohibited Assistance. Court staff must not:

(1) represent a litigant in court;

(2) perform legal research for a member of the public;

(3) deny a member of the public access to the court by providing information court staff knows to be incorrect;

(4) lead a litigant to believe that court staff represents the litigant as an attorney in any capacity;

(5) induce a member of the public to rely on court staff for legal advice;

(6) investigate facts of a litigant's case; or

(7) disclose information in violation of a statute, court rule, court order, or caselaw.

(f)Disclosure. All courts should provide conspicuous notice of the following.

(1) Communications between court staff and a member of the public do not create an attorney-client relationship.

(2) Communications with court staff are neither privileged nor confidential.

(3) Court staff must remain neutral and impartial in providing information.

(4) Court staff are not responsible for the outcome of a case.

(5) A member of the public should consult with an attorney if the individual desires personalized legal advice or strategy, confidential communications with an attorney, or representation by an attorney.

(g)Notice to the Public. The Judicial Administrator, upon consultation with the Access to Justice Committee, will provide a document for courts to post that describes assistance that court staff can and cannot provide to the public.

Kan. R. Acs. Jus. Comm. 1402

New rule adopted July 8, 2019, effective July 8, 2019.

SUPREME COURT OF COLORADO
OFFICE OF THE CHIEF JUSTICE

Directive Concerning Colorado Courts' Self-Represented Litigant Assistance

This directive concerns assistance provided by Clerks, Family Court Facilitators, Self-Represented Litigant Coordinators, and others to litigants or potential litigants in ***non-criminal matters***.

Authority for Self-Represented Litigant Assistance

The Colorado Courts provide self-help assistance to Self-Represented Litigants to facilitate access to the courts. The goal is to provide, within the bounds of this directive, assistance to achieve fair and efficient resolution of cases, and to minimize the delays and inefficient use of court resources that may result from use of the court system by litigants who are not represented by lawyers. There is a compelling state interest in resolving cases efficiently and fairly, regardless of the financial resources of the parties.

Definitions

(a) "Self-Represented Litigant" means any individual who seeks information to file, pursue, or respond to a case without the assistance of a lawyer authorized to practice before the court.

(b) "Self-Help Personnel" means court employees and court volunteers who are performing services as part of the Colorado Courts' Self-Represented Assistance. Self-Help Personnel include court clerks, family court facilitators, self-represented litigant coordinators, law librarians, and others who work to provide Self-Represented Assistance. Those court employees and court volunteers who are licensed lawyers are governed by this CJD in the same way that court employees and court volunteers who are not lawyers are governed. The State Court Administrator's Office and local districts will provide appropriate training to Self-Help Personnel.

(c) "Court Volunteers" are volunteers who volunteer for the court in helping to provide information to self-represented litigants. Court volunteers are not volunteering as or on behalf of a lawyer, law firm or law practice and as such, consistent with this CJD, do not provide legal advice.

(d) "Self-Represented Assistance" means support and guidance provided by Self-Help Personnel within the scope and limitations of this Chief Justice Directive, including collaboration and coordination with legal and community resources.

(e) "Approved forms" means the standardized forms and detailed instructions that have been approved by the State Court Administrator's Office and appear on the state judicial website, forms printed in the Colorado Supreme Court Rules, and local forms to facilitate following local case-processing procedures.

Role of Self-Help Personnel

(a) Basic Services. Self-Help Personnel may provide the following services:

(1) Provide general information about court procedures and logistics, including requirements for service, filing, scheduling hearings and compliance with local procedure;

(2) Provide, either orally or in writing, information about court rules, terminology, procedures, and practices;

(3) Inform Self-Represented Litigants of available pro bono legal services, low cost legal services, unbundled legal services, legal aid programs, alternative dispute resolution services including mediation and services offered by the Office of Dispute Resolution, lawyer referral services, and legal resources provided by state and local libraries;

(4) Encourage Self-Represented Litigants to obtain legal advice without recommending a specific lawyer or law firm;

(5) Explain options within and outside the court system, including providing information about community resources and services;

(6) Provide information about domestic violence resources;

(7) Offer educational sessions and materials, as available, and provide information about classes, such as parenting education classes;

(8) Assist Self-Represented Litigants in selecting the correct forms, and instructions on how to complete forms, based on the Self-Represented Litigant's description of what he or she wants to pursue or request from the court, including, but not limited to, providing forms for the waiver of filing fees. Where no form exists to accomplish the Self-Represented Litigant's request, Self-Help Personnel should inform the litigant of that fact;

(9) Record information provided by the Self-Represented Litigant on approved forms if that person cannot complete the forms due to disability, language, or literacy barriers;

(10) Assist Self-Represented Litigants to understand what information is needed to complete filling in the blanks on approved forms;

(11) Review finished forms to determine whether forms are complete, including checking for signatures, notarization, correct county name, and case number;

(12) Assist in calculating child support using the standardized computer-based program, based on financial information provided by the Self-Represented Litigant;

(13) Answer general questions about how the court process works;

(14) Answer questions about court timelines;

(15) Provide docket information;

(16) Provide information concerning how to get a hearing scheduled;

(17) Inform Self-Represented Litigants of the availability of interpreter and sign language assistance and process requests for such services;

(18) At the direction of the court, review Self-Represented Litigants' documents prior to hearings to determine whether procedural requirements have been met;

(19) Assist Self-Represented Litigants with preparation of proposed court orders based upon the parties' agreement or stipulation for signature of judge or magistrate;

(20) Answer questions about whether an order has been issued, where to get a copy if one was not provided, and read the order to the individual if requested;

(21) Provide a Self-Represented Litigant with access to information from a case file that has not been restricted by statute, rule or directive, including CJD 05-01;

(22) Provide assistance based on the assumption that the information provided by the Self-Represented Litigant is accurate and complete;

(23) Provide the same services and information to all parties to an action, as requested;

(24) Provide language and/or citations of statutes and rules, without advising whether or not a particular statute or rule is applicable to the situation;

(25) Provide other services consistent with the intent of this Chief Justice Directive and the direction of the court, including programs in partnership with other agencies and organizations.

(b) Prohibited Services. Self-Help Personnel shall not:

(1) Recommend whether a case should be brought to court;

(2) Give an opinion about what will happen if a case is brought to court;

(3) Represent litigants in court;

(4) Tell a Self-Represented Litigant that Self-Help Personnel may provide legal advice;

(5) Provide legal analysis, strategy, or advice;

(6) Disclose information in violation of a court order, statute, rule, chief justice directive, or case law;

(7) Deny a Self-Represented Litigant access to the court;

(8) Tell the Self-Represented Litigant anything Self-Help Personnel would not repeat in the presence of the opposing party, or any other party to the case;

(9) Refer the Self-Represented Litigant to a specific lawyer or law firm for fee-based representation.

Assistance by Self-Help Personnel is not the Practice of Law

The performance of services by Self-Help Personnel in accordance with this directive is not the practice of law, as Self-Help Personnel are to provide neutral information and are not to give legal advice. Information provided by a Self-Represented Litigant to Self-Help Personnel is neither confidential nor privileged. No attorney-client relationship exists between Self-Help Personnel and a Self-Represented Litigant.

Assistance by Lawyers and Nonlawyer Assistants who are not Self-Help Personnel

When Self-Help Personnel refer Self-Represented Litigants to community resources and services, this may include referrals to lawyers and law firms who can provide short-term limited legal services. Lawyers, and their nonlawyer assistants, as that term is used in the Colorado Rules of Professional Conduct 5.3, are guided by the Colorado Rules of Professional Conduct, including, but not limited to Rule 6.5 which addresses court-annexed limited legal services programs.

Availability of Services

Subject to available resources, assistance is available to all Self-Represented Litigants. Self-Help Personnel may direct Self-Represented Litigants to other appropriate services where the inquiry is better addressed. Some limited examples are: the Office of the District Attorney for questions about victims' services; the Americans with Disabilities Act coordinator in the location, for information about accommodations necessary to the Self-Represented Litigant; the collections investigator for information about payment of court costs; the clerk and recorder, for

information about property records; and the Division of Revenue, Motor Vehicle Division, for information about drivers' licenses or state identification.

Copy Costs

Courts may require Self-Represented Litigants to pay the reasonable copying costs of providing forms and instructions to Self-Represented Litigants, provided that the charge for persons who are indigent may be reduced or waived, as required by statute, rule or directive, including CJD 06-01.

Notice to Self-Represented Litigant

Self-Help Personnel shall provide and, if necessary, review with the Self-Represented Litigant, the below "Notice to Self-Represented Litigant." Such notice shall also be available through conspicuous posting and be made available in other languages, as needed.

NOTICE TO SELF-REPRESENTED LITIGANT

Self-help services are available to all persons who seek information to file, pursue, or respond to a case without the assistance of a lawyer authorized to practice before the court, within the resources available to Self-Help Personnel.

Self-Help Personnel are neutral information providers and will provide the same services and information to all parties in a case, if requested.

Self-Help Personnel are employees of the court or volunteers for the court and are available to provide information about court procedures, practices, rules, terminology, and forms, as well as community resources and services. They will assist you by providing information in a neutral way, but cannot act as your lawyer or provide legal advice.

Self-Help Personnel will explain the court process, will help you to understand what information is needed to fill in the blanks on a form, and will review your forms for completeness, but cannot tell you what your legal rights or remedies are, represent you in court, or tell you how to testify in court.

Self-Help Personnel will listen to you to help you locate forms and understand the information you need for your case, but because the Self-Help Personnel are court employees or court volunteers, any information you share with them is not confidential or privileged.

No attorney-client relationship exists between Self-Help Personnel and you as a Self-Represented Litigant. If you need a lawyer or legal advice, Self-Help Personnel will help you find community resources and services without recommending a specific lawyer or law firm.

Self-Help Personnel are not responsible for the outcome of your case.

Self-Help Personnel are not investigators and cannot provide investigative services.

Self-Help Personnel are court employees or court volunteers not acting on behalf of any particular judge. The presiding judge in your case may require that you change a form or use a different form. The judge is not required to grant the relief you request in a form.

In all cases, it is best to obtain the assistance of your own lawyer, especially if your case presents significant or complicated issues. If requested, Self-Help Personnel will help you find community resources and services without recommending a specific lawyer or law firm.

For more information about the court's self-help assistance, see Chief Justice Directive 13-01, which is available at http://www.courts.state.co.us/Courts/Supreme_Court/Directives/Index.cfm.

(end of notice)

Done at Denver this 12th day of June, 2013.

/s/
Michael L. Bender, Chief Justice

Appendix I: Survey of GAL Rules in Other States

SURVEY OF GAL RULES, STRUCTURE, OVERSIGHT, AND FUNDING

Illinois

Applicable Rules

Illinois Complied Statutes (ILCS) Chapter 750 [750 ILCS 5/506]

Basic Structure

Illinois offers three options for a child to have some type of advocate. 750 ILCS 5/506.

1. **Client-directed attorney**. A child may be represented by their own attorney, and the attorney is child-directed. "The attorney shall provide independent legal counsel for the child and shall owe the same duties of undivided loyalty, confidentiality, and competent representative as are due an adult client."
2. **Guardian ad Litem**. A child may have an attorney appointed as GAL to serve their best interests. The GAL is directed to testify, write a report, and make recommendations in accordance with the best interests of the child. GALs may be appointed in any proceeding involving "support, custody, visitation, allocation of parental responsibilities, education, parentage, property interest, or general welfare" of a child; the GAL must be an attorney.
3. **Child Representative**. A child may have an attorney appointed to serve as a "child representative", who also advocates for the child's best interests.

A court may appoint one or more of these categories on a single case. In deciding whether to appoint any one of the above categories of child advocates, the court must consider the nature and adequacy of the evidence that the parties will present, the availability of other methods of gaining information (social service organizations, evaluations by mental health professionals), and resources for payment. None of these categories of child advocates can abridge the decision-making power of the court and are not surrogate judges. **GAL** and **Child Representatives** are most akin to GALs in Indiana; below is a chart comparing their roles and responsibilities.

GAL	Child Representative
Best Interests	Best interests; explicitly must consider child's wishes but is not bound by them
Must investigate facts of case, and interview child and parties	Must review and investigate facts and circumstances of case, interview child and parties. Possess "all the powers of investigation as does a [GAL]."
May testify	May not testify
May submit report	
May make recommendations	No opinions or recommendations permitted
May be called as witness or for cross-examination	May not be called as a witness
	Must offer evidence-based legal arguments, and must disclose their positions and arguments in a pre-trial memorandum

	Encourage settlement and use of ADR; their position may be considered by court and parties in settlement conference
	Has same authority to participate in litigation as does an attorney for a party
	Explicit training requirements
	Shall not disclose confidential communications made by child, except as otherwise required

Training Requirements

An attorney may be appointed to serve as a GAL, or one of the other options noted above. An attorney appointed to serve as a child representative must have received training in child advocacy or must have experience that is determined to be equivalent by the chief judge of the circuit where the child representative was appointed. 750 ILCS 5/506.

In Cook County, where the Office of Cook County Public Guardian resides, lawyers who wish to represent children must have practiced in the area of child welfare or child advocacy for several years and go through a screening process including an interview by a committee appointed by the Presiding Judge. They must attend a certain number of trainings provided by the court and have had experience litigating a custody case. Before they can be appointed in any case, their names are presented to the Presiding Judge of the Domestic Relations Division for final approval.

Funding

In deciding whether to appoint any one of the above categories of child advocates, the court must consider the nature and adequacy of the evidence that the parties will present, the availability of other methods of gaining information (social service organizations, evaluations by mental health professionals), and resources for payment. This implies that GALs are paid for by the parties, and not the courts.

Office of Cook County Public Guardian, which is specific to Cook County, IL provides representation to children in the above category in civil custody disputes. They offer fees on a sliding scale, and fees may be subsidized.

Oversight

Office of Cook County Public Guardian, which is specific to Cook County, IL provides representation to children in the above category in civil custody disputes. They retain oversight over their attorneys and volunteers. Otherwise, oversight belongs to the court in which the case resides.

Ohio

Applicable Rules

Rule 48 of the Rules of Superintendence for the Courts of Ohio (Ohio Sup. R. 48). Courts may have their own local rules as well. Ohio Sup. R. 48 applies in domestic and juvenile cases.

Basic Structure

GALs are defined as follows: in any domestic relations or juvenile case, a person appointed to represent the child's best interests. When possible, the same GAL should be reappointed for a child in any subsequent case relating to the child's best interests. If a court appoints a GAL, the appointment order must include:

- A statement regarding whether a person is being appointed as a guardian ad litem only or as a guardian ad litem and attorney for the child.
- A statement that the appointment shall remain in effect until discharged by order of the court, by the court filing a final order in the case or by court rule.
- A statement that the guardian ad litem shall be given notice of all hearings and proceedings and shall be provided a copy of all pleadings, motions, notices and other documents filed in the case.

Appointments may be general or limited in scope.

A GAL is an officer of the court and may not engage in *ex parte* communication with the court. A GAL must appear at and participate in all hearings which relate to the GAL's duties and responsibility, or all issues substantially within a GAL's duties and scope. Non-attorney GALs cannot engage in the unauthorized practice of law. They must be vigilant in performing their duties and ask the court to appoint legal counsel or obtain legal counsel when needed. Attorney GALs may file pleadings, motions, and other documents. Attorneys GALs may request timely court reviews and judicial intervention in writing and with notice to the other parties.

Beyond representing a child's best interests, a GAL is tasked with providing a court with relevant information and informed recommendations about a child's best interests. At a minimum, a GAL has the listed responsibilities, with certain exceptions.

- GALs must identify themselves as such as when contacting individuals in the course of a particular case and must tell these individuals about the GAL's role.
- GALs must also tell these individuals that documents and information obtained may become part of court proceedings.
- A GAL must represent the child's best interests, which may be inconsistent with a child's wishes.
- In dealing with parties and professionals in and out of the courtroom GAL must be independent, objective, fair, and maintain an appearance of fairness.
- GALs must not engage in *ex parte* communication.
- A GAL is an officer of the court and must treat all parties with courtesy and respect.
- A GAL must appear at and participate in all hearings which relate to the GAL's duties and responsibility, or all issues substantially within a GAL's duties and scope.

- Non-attorney GALs cannot engage in the unauthorized practice of law. They must be vigilant in performing their duties and ask the court to appoint legal counsel or obtain legal counsel when needed.
- Attorney GALs may file pleadings, motions, and other documents.
- GALs must avoid any actual conflicts or the appearance of conflicts of interests arising from any activity or relationship. This includes employment, business, and personal and professional contacts with parties or others.
- GALs must not self-deal and must avoid associations from which the GAL might benefit either directly or indirectly, except for compensation for their services.
- If a GAL becomes aware of any actual or perceived conflict of interests, the GAL must take immediate action to resolve the conflict, inform the court and the parties of the conflict and the action, and may resign from GAL duties with court permission. A GAL may seek guidance from the court in this matter.
- A GAL has an ongoing duty regarding notification and resolution of conflicts of interests.
- GALs must make efforts to become informed about the facts of the case and to contact all parties.
- Unless it is impractical or inadvisable, GALs must meet and interview the child; observe the child with all parents, caretakers, and guardians; meet with the child without the presence of parents, guardians, or caretakers; visit the child at the child's residence; determine the child's wishes; interview all the parties, foster parents, and others with significant involvement with the child or who have relevant knowledge; review pleadings and other relevant court documents in the case; review criminal, civil, educational, and administrative records pertaining to the child and the parties or child's family; interview school personnel, medical and mental health providers, child protective service workers, and other relevant court personnel; obtain copies of relevant records; request the court order psychological evaluations, mental health or substance abuse assessments, or other evaluations or tests of the parties that the GAL feels would be helpful to the court; perform any other investigation necessary to make informed recommendations regarding he child's best interests.
- A GAL must perform their responsibilities in a prompt and timely manner.

GALs must prepare written final reports which include recommendations in a timely fashion. Reports must list activities performed, hearings attended, persons interviewed, documents reviewed, experts consulted, and other relevant information that the GAL considered in reaching their recommendations or in performing their duties. Reports must be provided to all parties.

GAL reports for juvenile/abuse/neglect cases have different requirements from GAL reports in domestic relations cases. For domestic relations GAL reports, the final report must be filed with the court and made available to the parties at least seven days before the hearing, unless the due date is extended by the court. Parties must be given copies. The court shall consider the recommendation of the guardian ad litem in determining the best interest of the child only when the report or a portion of the report has been admitted as an exhibit.

A GAL is an officer of the court and may not disclose information from or about the case or the investigation, except in reports to the court or as otherwise necessary to perform the duties of the GAL. GALs must maintain confidential personally identifying information and may request that

the court restrict access to the report or a portion of the report to preserve the privacy, confidentiality, or safety of the child or parties. The court may order disclosure or access to information received from a confidential source.

Courts may appoint attorneys to serve as both a GAL and an attorney for a child. When an attorney is so appointed, the attorney must advocate for both the child's best interests and the child's wishes. In doing so, attorneys must be mindful of Rule 3.7 of the Rules of Professional Conduct and act accordingly. If a GAL determines there is a conflict between the child's best interests and the child's wishes, the GAL must, as soon as is practical, request in writing that the court resolve the conflict by issuing appropriate orders.

Training Requirements

Unless there is an exception, a GAL must meet the qualifications to be a GAL and must complete all necessary training under both state and local rules. GALs must meet the qualifications and training requirements for the statewide rule and any local rules for each county where the GAL serves. If the GAL becomes aware of any grounds for disqualification or unavailability to serve, the GAL must promptly notify each court. A Gal must provide the court with a statement indicating the GAL's compliance with all initial and ongoing training requirements, and the court maintains these files.

Ohio Sup. R. 48 sets forth minimum training requirements for GALs as follows:

- Completion of a pre-service training course
- Ongoing continuing education training every year to continue to qualify for service
- Pre-service training course must be the 12-hour GAL course provided by the Supreme Court of Ohio, the Ohio GAL/CASA Association program, or with prior approval of the appointing court, be a course at least twelve hours in length that covers the delineated topic areas.
- Preservice training courses must include training on
    1. Human needs
    2. Childhood development
    3. Communication with adults and children
    4. diversity and multicultural awareness
    5. interviewing skills, methods of critical questioning, open ended questioning
    6. understanding a child's perspective
    7. sensitivity, building trust, and confidentiality
    8. preventing child abuse and neglect, including assessing risk and safety
    9. family and child issues including family dynamics, substance abuse and its effects, basic psychopathology for adults and children, domestic violence and its effects
    10. the legal framework of cases, how to perform records checks, accessing, assessing, appropriate GAL protocol, a GAL's role in court, legal resources and service practice, report content, mediation and ADR
- Continuing education must be a 6-hour program provided by the Supreme Court of Ohio, the Ohio GAL/CASA Association program, with prior approval of the appointing court, be a course at least three hours in length that covers the delineated topic areas.

- The continuing education course must be designed specifically to be continuing education for GALs and not preservice education and must consist of advanced topics related to topics identified as critical components of the preservice training.

If a GAL fails to complete the required 6-hour ongoing education course, that person is not eligible to serve as a GAL until the requirement is satisfied. If the gap in continuing education is three years or less, the person qualifies to serve after completing the 6-hour ongoing education requirement. If the gap is more than three year, the person must redo the twelve-hour preservice training course to requalify to serve.

Funding

The court should make provisions for fees and expenses in its order appointing the GAL. A GAL who is paid by the court or a party must keep accurate records of time spent services rendered, and expenses incurred, and must give a copy of the accounting to all parties or person responsible for payment.

Oversight

Every court that appoints GALS must ensure that only qualified, trained GALs are appointed, and must ensure that Ohio Sup. R. 48 is followed. Courts must:

- maintain a public list of approved GALs
- establish criteria for appointing and removing a GAL in line with Ohio Sup. R. 48
- equitably distribute the GAL workload amongst GALs
- have a person who coordinates the application and appointment process and keeps the files, maintains files for all applicants and trained persons, issues certificates, distributes training opportunity information, and receives comments and complaints
- Require applicants to submit a resume or an information sheet with the applicant's training, experience, expertise and other information showing the person's ability to successfully perform the responsibilities of a GAL
- Conduct criminal and civil background checks and other investigations of the person's fitness to serve as a GAL
- Conduct an annual review of the list to determine if all persons on the list are still eligible, have complied with all training and education requirements, and that they have satisfactorily performed their assigned duties
- Require all persons to annually certify they are unaware of any circumstances that would disqualify them from serving as GALs and to report their ongoing education training
- Develop a process or local rule and appoint a person for accepting written comments and complaints regarding the performance of GALs practicing before that court, and have the appointed person forward the comments and complaints to the appropriate judge for necessary action, and record any action in the GAL's file
- Give any comments or complaints about a GAL to that GAL and notify the commenting/complaining person and the GAL of any actions taken.

Georgia

Applicable Rules

Georgia Uniform Superior Court Rules, Rule 24.9 (Ga. Unif. Super. Ct. 24.9)

Basic Structure

A GAL is defined as follows: any properly trained person appointed by a family law court to represent the child's best interests. A GAL is appointed by a family law court judge, who has the authority to appoint any person as long as they have been trained as a GAL or are otherwise familiar with the roles, duties, and responsibilities. This is determined by the judge.

The GAL is to represent the child's best interests and is considered an officer of the court. The GAL is tasked with assisting the court and the parties in reaching a decision regarding child custody, visitation and child-related issues. The Rule notes the GAL's position of trust and provides that a GAL must exercise due diligence in performing their duties; GALs should be respectful of cultural and economic issues and diversity as it is relevant to the child's best interests.

GALs have ability to obtain all records relating to the child, whether by virtue of their appointment order, or by execution of a written release by the parents, or by court order. GALs have the right to examine the residence where the child lives. GALs may ask the court to order the examination of the child, parents, or other custody-seeking person by a medical or mental health professional. GALs have a conditional right to access the confidential records of parents or other parties to the case; GALs are allowed access if the person signs a release.

Unless there is a specific designated time period, the GAL appointment terminates upon the final disposition of all matters for custody, visitation, and child related issues.

GALs may testify in court. GALs are entitled to notice of hearings, and are entitled to participate in all hearings, trials, investigations, depositions, settlement negotiations, and other proceedings. GALs are entitled to be given notice of and participate in mediations, depositions, hearings, trials, and all other proceedings regarding the child. GALs must be notified of settlement agreements between the parties, and GALs have the opportunity to make an objection to the settlement agreement before the court approves the agreement.

The GAL is not permitted to question witnesses or present argument, unless there are extraordinary circumstances and with court approval. The GAL may file motions and pleadings if the GAL determines that it is necessary in order to "preserve, promote, or protect the best interest of a child." This includes discovery and issuing subpoenas. GALs may ask the court to order the parties to undergo mental fitness or custody evaluations.

A GAL report is not a substitute for the GAL's presence and testimony. The GAL will likely be called as the court's witness unless otherwise directed. The GAL is subject to examination by the parties and the court. The GAL is deemed an expert on the specific children's best interests and may testify "as to the foundation provided by witnesses and sources, and the results of the GAL's investigation, including a recommendation as to what is in a child's best interest."

The GAL shall write and submit a report to the parties, their counsel, and the court "detailing the GAL's findings and recommendations". This report shall be admitted into evidence for direct evidence and for impeachment purposes, as well as any other purpose. The court is to consider the information and recommendations in making its decision, but the GAL's recommendations are "not a substitute for the court's independent discretion and judgment." The GAL's report is not substitute for the GAL's attendance and testimony at the hearing, unless all parties agree.

The report must

- summarize the GAL's investigation,
- identify all sources the GAL contacted or relied upon in preparing the report.
- offer recommendations concerning child custody, visitation, and child-related issues
- offer the reasons supporting those recommendations.

The report must be released to counsel and parties only (including staff and experts of counsel) and disseminated no further unless ordered by the court. The court may order and allow the parties and counsel to review the contents of the GAL file, and the parties may pay costs for copies.

A GAL report and its contents may not be disseminated without permission. Doing so will result in sanctions. A GAL report may be filed under seal.

GALs may communicate with counsel for a party without including the other party's counsel. That counsel is not required to notify the other party's counsel of the conversation. GALs are not permitted to engage in *ex parte* communication with the court, unless the parties consent, or there is an emergency about the child's welfare. If the GAL engages in *ex parte* communication regarding an emergency, the GAL should request an immediate hearing to address the emergency.

Training Requirements

The appointing judge has the authority to appoint any person as long as they have been trained as a GAL or are otherwise familiar with the roles, duties, and responsibilities. This is determined by the judge. (R. 24.9(1)). GAL training is provided by or approved by the Circuit where the GAL serves. Training includes but is not limited to the following topics:

- domestic relations law and procedure, including the appropriate standard to be applied in the case; domestic relations courtroom procedure;
- role, duties, and responsibilities of a GAL;
- recognition and assessment of a child's best interests;
- methods of performing a child custody/visitation investigation;
- methods of obtaining relevant information concerning a child's best interest;
- the ethical obligations of a GAL, including the relationship between the GAL and counsel, the GAL and the child, and the GAL and the court;
- recognition of cultural and economic diversity in families and communities;
- base child development, needs, and abilities at different ages;
- interviewing techniques; communicating with children;
- family dynamics and dysfunction, domestic violence and substance abuse;

- recognition of issues of child abuse;
- available services for child welfare, family preservation, medical, mental health, educational, and special needs, including placement/evaluation/diagnostic treatment services.

Funding

The amount of fees to paid to the GAL is within the court's discretion, as is how the fees are divided between the parties. A GAL's request for fees must be considered after the request has been properly served on the parties and the parties have had an opportunity to be heard, unless they waive that opportunity. If a GAL determines that extensive travel is required, or other extraordinary expenses are needed, the GAL may ask the court in advance for payment of the expenses by the parties.

Oversight

A party may make a motion to remove a GAL, or the court may do so *sua sponte*. The court may remove a GAL for "good cause shown."

Arizona

Applicable Rules

Arizona Rules of Family Law Procedure, Rules 1, 10, and 11. Ariz. Fam. Law Proc. R. 1 provides that the Family Law and Procedure Rules govern all Arizona Title 25 actions—this includes most custody and parenting situations in divorce and paternity cases.

Arizona Revised Statutes, A.R.S. § 25-406.

Basic Structure

A court can appoint one or more of the various types of child representatives (**best-interests attorney, child's attorney, or court-appointed advisor**) in a family law case for any reason the court deems appropriate.

A GAL is not clearly or specifically defined in Title 25 or in Rules of Fam. Proc. Other areas of Arizona juvenile law (specifically dealing with abuse and neglect) define a GAL as a person appointed by the court to protect the interest of a child, minor, or an incompetent person in certain types of court cases (*see e.g.* A.R.S. 8-221, defining a GAL for purposes of juvenile dependency proceedings). However, A.R.S. 25-321 permits an attorney to be appointed for a child to represent their interests with respect to support, custody and parenting time. The court may enter an order for costs, fees and disbursements in favor of the child's attorney. The order may be made against either or both parents.

Furthermore, Rules 10 and 11 allow a court to appoint either a best interests attorney for a child, a child-directed attorney, or a "court-appointed advisor", all of whom are directed to represent a child's interests.

A.R.S. § 25-406 allows a court to order an investigation and report about legal decision making, parenting time arrangements, and potentially other custody matters for a child. This may be done by a court social service agency, the staff of the juvenile court, the local probation or welfare department, or private person. Such a person must be properly trained, as provided by the statute. There are provisions for training requirements and cost allocation. The investigator may consult any person who has information about the child or any of the issues at play in the court case. The report must be provided ten days in advance, along with other requirements in order for the report to be admissible.

Any order appointing a GAL must clearly state why a GAL was appointed, the duration of the appointment, fee information, that access to the child and confidential information about the child is granted to the GAL, and language requiring the parents to comply with these orders.

The roles and duties of an attorney GAL or a child-directed attorney can differ from a court-appointed advisor, particularly when it comes to courtroom activities. Topics on which the two roles differ are: participation in proceedings in the same manner as a party or the party's attorney would; ability to testify; and ability to submit a report to the court.

Attorney GAL Court Appointed Advisor

must participate in the proceeding to the same extent as an attorney for any party	may not make opening and closing statements, examine witnesses, or engage in discovery; if the advisor is an attorney, may take only those actions that an advisor who is not an attorney may take
may not engage in *ex parte* contact with the court except as authorized by law	may not engage in *ex parte* contact with the court except as authorized by rule or court order
may not be compelled to produce the attorney's work product developed during the appointment	
may not be required to disclose the source of information obtained as a result of the appointment	
may not submit a report into evidence	must submit a report under A.R.S. § 25-406, which is admissible, stating the advisor's recommendations regarding the child's best interests and the basis for those recommendations, including consideration of the applicable statutory factors
may not testify in court	is subject to deposition and may testify at a hearing

Training Requirements

General training requirements—A.R.S. § 25-406, "Investigations and reports", deals with the ability of the court to order an investigation and a require a report, and the training that must be completed by a person who is ordered to do so. A court appointed attorney, a court appointed advisor, or any person who conducts an investigation or prepares a report for a court pursuant to this statute must meet the minimum training, which involves initial and ongoing requirements for training on domestic violence and child abuse.

- Six initial hours of domestic violence training
- Six initial hours of child abuse training
- Four subsequent hours of training every two years on child abuse and domestic violence
- A person who has completed training to become licensed or certified can use that training to completely or partially fulfill these requirements if their training meets the six hour requirements on both child abuse and domestic violence. Subsequent professional training may operate to completely or partially fulfill the subsequent training requirements.
- Physicians are exempt from these requirements.

GAL/best interests attorney or child-directed attorney—An attorney who is appointed as a best interests attorney or a child's attorney should be qualified "through training or experience in the type of proceeding in which the appointment is made, as determined by the court. The attorney should be familiar with the American Bar Association Standards of Practice for Lawyers Representing Children in Custody Cases."

Court appointed advisor—A person, who may be an attorney, who is appointed as a court-appointed advisor must have training or experience in the type of proceeding in which the appointment is made and must comply "with A.R.S. § 25-406. The court-appointed advisor should be familiar with the Uniform Law Commission's Uniform Representation of Children in Abuse and Neglect and Custody Proceedings Act."

Funding

If an investigation and report are ordered pursuant to this section or if the court appoints a family court advisor, the court shall allocate cost based on the financial circumstances of both parties. A court cannot appoint a court-appointed advisor or attorney either as a GAL attorney or as the child's actual attorney from a state or county funded juvenile dependency roster unless the court finds that the child may be a victim of abuse or neglect.

Oversight

None determined beyond court oversight in the court where the case resides.

Tennessee

Applicable Rules

Tennessee Supreme Court Rules, Rule 40A—Appointment of GALs in Custody Proceedings. This rule applies to non-abuse and neglect cases, and is noted as applying to custody, parenting time, domestic violence, divorce, paternity, and contested adoption cases. (Tenn. Sup. Ct. Rule 40A)

Basic Structure

Guardian ad litem is defined as a licensed attorney appointed by the court to represent the best interests of a child or children in a custody proceeding. This same GAL is permitted to be appointed as a GAL in a later above/neglect/termination proceeding. As is discussed below, the GAL functions very much as a best-interests attorney.

A GAL can be appointed at any stage of the proceeding and should be done when the child's best interests are not being adequately protected by the parties. GAL appointments should not be routine appointments and should be done sparingly. Lists factors for the court to consider in appointing a GAL (constitutional rights of parents, child's wishes to participate, signs of child being manipulated by adults, likelihood of child being a witness or in chambers interview, level of conflict between parents, custodial or parenting time interference, possibility of relocation, safety concerns, special medical, mental health, education or other needs of the child that require investigation or advocacy, dispute of paternity of child, or other factors). The appointment order must be a written order and set forth certain required items in plain language (reasons for appointment, specific duties of GAL, deadlines, appointment duration, and compensation terms). The order is supposed to be detailed to given GAL guidance and "gives the court effective oversight of the [GAL's] role." A GAL appointment order is only in effect for the amount of time provided in the order. If there is no specified time frame, the appointment ends when the trial court issues a final order.

The GAL's role is laid forth as to represent the child's best interests by gathering facts and presenting facts for the court's consideration, subject to the rules of evidence. The GAL is specifically noted as not being a special master for the court and is not permitted to perform any other judicial or quasi-judicial roles. The GAL must perform their duties in an unbiased and fair manner.

The GAL should conduct an investigation as thoroughly as the GAL deems necessary (can include emotional needs, social needs, educational needs, vulnerability and dependence on others, need for stability, age, development, child's preferences, bonds and ties between child and others, continuity, home, school and community records, willingness of people to support each other and their roles in child's life, and other factors noted in Tenn. Code Sec. 36-6-1 06). A GAL can obtain a child's medical, psychological, and school records, and can interview the child, people with knowledge about the child, and parties to the suit. The GAL can obtain the wishes and preferences of the child, if the child is age 12 or older, but is not bound by those wishes. The GAL can encourage settlement and perform any other tasks requested by the court.

Subject to certain limitations, a GAL is given the ability to have access to the child without the presence of others, and confidential information regarding the child. There may be other laws

that apply regarding confidentiality, and the GAL is required to maintain the confidentiality of the information released, excepts as necessary for the resolution of issues in the case.

Tennessee rules make substantial provisions for situations where child's wishes do not align with GAL's perception of child's best interests.

The GAL functions as a lawyer. A GAL in a hearing is given all the same rights and abilities that an attorney representing a party has (service of notice and documents, attendance, participation in hearings, inclusion in ADR, etc.). The GAL does not prepare a report, according to commentary, and also does not make a recommendation. A GAL may not be a witness or testify in any proceeding in which he or she serves as guardian ad litem, except in those extraordinary circumstances specified by Supreme Court Rule 8, Rule of Professional Conduct 3.7. GALs are not permitted to initiate appeals, unless they are appealing an issue relating to a change of GAL or fees.

Although a GAL cannot submit a report and recommendations to the court, the GAL may file a pre-trial brief/memorandum as any attorney in any other case. The guardian ad litem may advocate the position that serves the best interest of the child by performing the functions of an attorney, including but not limited to those enumerated in Supreme Court Rule 40(d)(7). The guardian ad litem must present the results of his or her investigation and the conclusion regarding the child's best interest in the same manner as any other lawyer presents his or her case on behalf of a client: by calling, examining and cross-examining witnesses, submitting and responding to other evidence in conformance with the rules of evidence, and making oral and written arguments based on the evidence that has been or is expected to be presented.

Guardianships—There appear to be separate GAL provisions for guardianship cases, found at TN Code 34-1-107. Courts can appoint a GAL in a guardianship proceeding at any point, and in some circumstances are required to do so. GALs in these cases must be lawyers, unless there are insufficient lawyers, in which case, the court may appoint a nonlawyer. A GAL in this type of case must impartially investigate and report facts to the court and write a report with recommendations. "The [GAL] serves as an agent of the court and is not an advocate for the respondent or any other party." The statute sets forth a list of duties the GAL must perform, some of which involve interviewing the child and ascertaining the child's wishes.

Training Requirements

The person appointed should be "a person with the knowledge, skill, experience, training, education and/or any other qualifications the court finds necessary that enables the guardian ad litem to conduct a thorough and impartial investigation and effectively represent the best interests of the child."

Funding

GALs must be compensated for fees and expenses in a reasonable amount, determined by the court. The court must consider the following: (1) the time expended by the guardian; (2) the contentiousness of the litigation; (3) the complexity of the issues before the court; (4) the expenses reasonably incurred by the guardian; (5) the financial ability of each party to pay fees

and costs; (6) the fee customarily charged in the locality for similar services; and (7) any other factors the court considers necessary.

Fees may be allocated amongst parties, and the Rule makes provisions for advance deposits, equitable and non-equitable allocations, and reallocations of fees. The appointment order must specify the hourly rate of the GAL, along with any retainer/deposit/etc. The Rule also makes provisions for periodic payments.

In order for a GAL to be paid, the GAL must submit a written claim of payment that justifies the fees and expenses, supported by an affidavit. Objections may be filed to the claim. Objections of both interim and final fees have timelines and provisions for hearings by the court. GALs must seek approval before incurring extraordinary expenses.

GALs are not permitted to initiate appeals, unless they are appealing an issue relating to a change of GAL or fees.

Oversight

The order appointing a GAL is meant to be highly specific and detailed in order to give the appointing court effective oversight of the GAL's role and performance of their duties. There is no right to preemptory change of GAL. If someone alleges GAL appointment was unnecessary or that the person appointed is unsuitable or biased, these allegations must be immediately raised and should be addressed by the trial courts through pleadings. Appeals from any decisions are specifically noted as allowed. Commentary to the rules notes that GALs who violate conflict of interests rules applicable to lawyers are subject to professional discipline.

Michigan

Applicable Rules

Michigan Code, 722.24, and 712A.17d.

Basic Structure

At any time, the court determines the child's best interests are not adequately represented, the court may appoint a lawyer-GAL for the child. A GAL's duty is to a child, not the court. The GAL must be an independent representative for the child. GALs must fully participate in all aspects of litigation. GALS have access to all relevant information about the child. GALs must meet with or observe the child, assess the child's needs and wishes, and advocate for those things at all stages of litigation.

GALs may conduct investigations, interview the child, interview social workers, family members, and others, and review relevant records. GALs should explain their role to the children. GALs must file all necessary documents and pleadings, and call witnesses on the child's behalf. GALs must attend all hearings.

A GAL may file a report with recommendations, and the court may read the report. The report is not admissible unless all parties so stipulate. Parties can use the report for settlement purposes. GALs must make determinations about the child's best interests according to the GAL's best understanding; this may not reflect the child's wishes. The child's wishes are relevant to the GAL's determination of the child's interests and wishes must be given weight according to the child's maturity. Consistent with the privilege held by the child, the GAL must inform the court of the child's wishes and preferences.

GALs must monitor implementation of plans and orders for the child, and inform the court if services are not being provided or if services are failing to accomplish their goals. GALs may work to promote settlement and common interests and resolutions of issues. GALs may request court permission to pursue items not specifically within the GAL's scope.

GAL in Court—no one may call a GAL as a witness to the case. The GAL file is not discoverable. GALs are expected to appear at all hearings and participate fully. GAL's duty is to child and has an attorney client privilege with the child. If the GAL determines that the child's wishes are at odds with the child's interests as determined by the GAL, then the GAL must communicate the child's position to the court. The court may appoint an attorney for the child if deemed necessary, and this attorney serves in addition to the GAL.

Training Requirements

GALs must participate in training on child development.

Funding

Courts may determine ability to pay and assess fees accordingly.

Oversight

None determined beyond court oversight where the case resides.

Pennsylvania

Applicable Rules

Pennsylvania Consolidated Statutes, Title 23, Part VI, Chapter 53, Sec. 5334.
(23 Pa.C.S. § 5334)

Basic Structure

A GAL must represent the legal interests and the best interests of a child. A court may appoint a GAL *sua sponte* or at the request of a party. If abuse is alleged, the court must appoint a GAL for the child if the child does not already have counsel under Section 5335 or if the court is satisfied that relevant information will only be provided to the court with the GAL appointment.

A GAL must meet with a child as soon as possible after the appointment and must meet with the child regularly (assuming the child is of appropriate age and maturity to do so). The GAL must explain the proceedings to the child in an age and developmentally appropriate manner. A GAL must be given access to relevant court records, reports of examinations of the parents/custodians, psychological records, and school records. The GAL must conduct all further investigation as is necessary to get relevant information for the court. This includes interviewing potential witnesses, including parents/caretakers.

The GAL must advise the court of the child's wishes if they can be determined, and evidence supporting those wishes must be presented to the court. A difference between the GAL's recommendations regarding the child's best interests and the child's wishes is not a conflict for a GAL. A GAL must make specific recommendation in a written report, and this includes needed services. The Court must make the report part of the record, and the parties may review the report. The parties may also file written comments with the court regarding the contents of the report, and these comments also become part of the record.

A GAL must participate in all proceedings and can examine and cross-examine witnesses. The GAL can present witnesses and other evidence in furtherance of the child's best interests. A GAL may not testify except as authorized by Pennsylvania Rules of Professional Conduct, but he GAL may make legal arguments based on relevant evidence.

Note: Separate provisions regarding the appointment of counsel for children can be found at Section 5335.

Training Requirements

The GAL must be an attorney.

Funding

The court may assess the cost. The Court can order a party to pay all or part of the costs. It appears that some counties have County GAL programs, which may handle both child welfare cases and civil custody cases. At least some of these programs are county-funded in part or full.

Oversight

Oversight appears to be left to the court or county in which the case resides.

Florida

Applicable Rules

Florida Statute 61.401 through 61.405.

Basic Structure

In a divorce case or "for the creation, approval, or modification of a parenting plan" a court may appoint a GAL if the court finds it is in the best interests of the child. The court can also appoint counsel for the GAL. If the allegations include abuse, abandonment, or neglect and are determined to be well-founded, the court must appoint a GAL.

The GAL is a party to the proceeding.

A GAL acts in the child's best interests as either as next friend of the child, investigator, or evaluator. A GAL does not act as an attorney. A GAL can be an attorney or a non-attorney.

The GAL is granted powers and privileges necessary to advance a child's best interests. A GAL may investigate anything in the pleadings affecting the child. Once a GAL gives notice, the GAL may interview the child, witnesses, or other people with information about the child's welfare.

A GAL may have counsel. A GAL may ask, through counsel, for an order allowing the GAL to inspect records relating to the child/parents/custodial persons. Notice and a hearing must happen first. A GAL may ask through counsel for an expert examination of the child/parents/interested parties by a wide variety of medical and mental health professionals. A GAL can assist the court in obtaining impartial expert examinations.

A GAL may address the court and make written or oral recommendations to the court. The GAL must file a written report which may include recommendations and the wishes of the child. The report must be served 20 days in advance, and the GAL must be given copies of all pleadings, notices, etc. filed in the case. A GAL, through counsel, ay file pleadings, motions, petitions, etc. as the GAL necessary or appropriate in the course of their duties. The GAL is entitled to be present and participate in all depositions, hearings, and other proceedings, and can compel a witness's attendance through counsel. If the parties agree or stipulate on a matter affecting the child's welfare, the GAL must notify the court of their stance on the agreement/stipulation within 10 days of the GAL being served.

A GAL must maintain confidentiality with respect to information and documents received as part of their duties. The GAL cannot disclose this information except in a report to the court and served on all parties, or as the court directs. GALs have immunity from civil and criminal liability for the good faith performance of their duties.

Non-attorney GALS may not practice law.

Training Requirements

A GAL must be certified by the GAL program, or a nonprofit legal aid organization, or be a FL attorney. There are background check requirements. If a person is certified via a legal aid organization, the org must use uniform training developed by the FL bar.

Funding

Private pay at least in part.

Oversight

From the training requirements imposed on GALs, it appears that GALs either must be attorneys or otherwise certified by the GAL programs or a legal aid organization. It is not clear if they must be a part of that organization, or whether they exercise any supervision over a GAL after certifying them.

New Mexico

Applicable Rules

New Mexico Statutes, Chapter 32A, Children's Code Sec. 32A-1-7 [Guardian ad Litem; powers and duties] (N.M. Stat. Ann. 32A-1-7).

Basic Structure

A court may appoint a GAL in any contested child custody proceeding, on a party's motion or *sua sponte*. The GAL serves as an arm of the court and assists the court in discharging its duty in determining a child's best interests. The GAL functions as a best interests attorney, who independently investigates and advocates for the child's best interests, and is not bound by either the child's or the parties' wishes. The GAL should make findings and recommendations, but the GAL is not the final arbiter of the child's best interests, which remains in the court's purview.

The court must consider certain factors in determining whether to appoint a GAL:

- the wishes of the parents or other parties
- age of the child
- contentiousness of the parties or other dynamics affecting the child, including past or present mental health issues of a party or a household member
- extent to which the appointment will assist the court by providing factual information useful to the court in determining the child's best interest
- ability of the parties to pay
- views or concerns expressed by the child
- requests for extraordinary remedies, including supervised visitation
- proposed relocation
- likelihood that the child will be called as a witness or be examined by the court in chambers
- past or present substance abuse, sexual abuse, emotional abuse or domestic abuse by, or to, a party, the child or a household member
- disputes as to paternity
- interference, or threatened interference, with custody or parenting time, including abduction
- special physical, educational or mental health needs of the child
- inappropriate adult influence on, or manipulation of, the child
- extent to which the litigation process is harmful to the child
- whether the child's needs can be protected through the limitation of the appointment to a specific issue
- any other relevant factors

Appointment orders must: conform with New Mexico rules; specify the GAL role, reasons for appointment, and duration of appointment; should discuss any tasks, duties, and limitations; authorize the GAL to communication with medical and mental health professionals and other persons providing services to the parents, children, or other parties in the case; require people in the case to sign releases for the GAL to access information.

The GAL is tasked with specific duties, in addition to any duties laid forth in the appointment order:

- if the child is age 6 or older, interviewing the child face-to-face outside the presence of all parties and counsel
- if the child is under age 6, the GAL may interview the child outside the presence of the parties and counsel at the GAL's discretion
- interviewing all parties in conformity with Rule 16-402 NMRA and the order appointing the GAL
- interviewing any therapist for the child; and interviewing other lay persons, mental health professionals, medical professionals, or other individuals providing services to parents, children, or other parties in the case at the GAL's or court's discretion
- determining the child's wishes, if appropriate
- protecting the best interests of the child or children
- Must explain the role of the GAL in a developmentally appropriate manner to the child
- Must inform the child in a developmentally appropriate manner that the GAL may need to use information the child gives to the GAL to provide assistance to the court
- Must keep the child informed, in a developmentally appropriate manner, of the nature and status of the proceedings
- Must review and accept or decline any proposed orders affecting the child, and explain to the court any basis of opposition
- Must consider the child's objective in determining what to recommend

New Mexico rules allow for privilege between a GAL and a child. All communications between the child and the guardian ad litem are privileged as provided in New Mexico rules (Rule 11-503 NMRA). If materials in a GAL's file are not privileged under those rules, they are still deemed confidential and are not subject to public disclosure and are also considered to trail preparation materials and are subject to discovery only as provided in New Mexico rules. The GAL can claim this privilege on behalf of the child or may waive the privilege on a limited basis on behalf of the child in order to protect the child' best interests. This limited waiver does not constitute a waiver for all matters and materials, but rather, for limited purpose of the waiver. The parents/guardians cannot claim the privilege or interfere with the GAL's assertion or waiver.

The New Mexico rules also make provisions for certain timelines for submitting recommendations, for the parties to submit proposed orders adopting recommendations, to objecting to proposed recommendations, and how these objections must be presented. GALS must serve a written report of investigation and separate written recommendations to all parties and counsel at least 11 days before the recommendations are filed with the court, except in the case of emergency. GALs must also file the recommendations with the court and providing written notice to the parties of the following: deadlines for filing objections to recommendation, that a failure to file timely objections is considered a waiver of objections and the court can adopt the recommendations without hearing, and the deadlines for submitting stipulated orders. In the case of an emergency, a GAL can file emergency recommendations without regard to timelines.

GALs may call and examine witnesses at any hearing; the GAL can provide a verbal report and recommendations at any hearing or trial in the matter.

Training Requirements

New Mexico has set forth performance standards for GALs which were created for abuse and neglect cases but are written in a general manner. A GAL must have ten hours of relevant annual training pursuant to those standards.

Funding

The order appointing the GAL must state the GAL's authorized retainer fee and hourly rate, provide for itemized monthly statements to the parties, and designate the manner in which the parties bear the costs. Parties or the GAL can request hearings on fees and costs.

Oversight

New Mexico has set forth performance standards for GALs which were created for abuse and neglect cases but are written in a general manner. There is no apparent organized oversight.

Texas

Applicable Rules

Texas Family Code, Title 5, Subtitle A, Chapter 107. (Texas Fam. Code § 107).

Basic Structure

In suits where a child's best interests are at issue, a court may appoint an amicus attorney, an attorney ad item, or a GAL. This excludes "a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child." The equivalent role of a GAL in Indiana civil family law would be either the amicus attorney or a GAL. Other options, such as the attorney ad litem or the dual appointment of an attorney ad litem/GAL are defined as appointments when a suit is filed by a government entity, presumably meaning CHINS-type cases.

"Amicus attorney" is defined as an attorney appointed by a court in a suit (other than a suit filed by a governmental entity); attorney's role is to provide legal services necessary to assist the court in protecting a child's best interests, rather than providing legal services to child. Appears to be Indiana equivalent of appointing an attorney to advocate for a child's best interests. They may not be appointed in CHINS and termination type proceedings.

Alternatively, there is an "attorney ad litem" who provides legal services to a child and owes the duties of undivided loyalty, confidentiality, and competent representation. Appears to be Indiana equivalent of direct representation.

Guardian ad Litem is an umbrella definition, which includes other definitions. It is defined as a person who is appointed to represent a child's best interests, and includes

- An attorney ad litem appointed to serve in the dual role of GAL and attorney ad litem.
- a volunteer advocate from a charitable organization who is appointed by the court as the child's GAL
- a non-attorney professional who holds a relevant professional license and has training related to the determination of a child's best interests
- an adult with the competence, training, and expertise determined by the court to be sufficient to represent the best interests of the child

Attorneys can be appointed as both a GAL and an attorney ad litem for the child in a suit filed by a governmental entity. Attorneys are explicitly prohibited from serving in the dual role of GAL and attorney ad litem in non-CHINS type proceedings (therefore, not in civil custody proceedings).

Volunteer advocates who are appointed to serve as GALs in civil custody (non-CHINS) type cases must have training that is designated for participation in cases of this nature, and their training cannot have been focused solely on termination/CHINS type cases.

There is no limitation in the definition of a GAL in Texas of a GAL only being appointed in suits filed by governmental entities; presumably, therefore, a GAL could serve in a civil custody suit.

The GAL statute also makes other provisions relevant to children who are subject to CHINS-type proceedings.

Duties, rights, and limitations placed on GALs and amicus attorneys are compared below.

Guardian ad Litem	Amicus Attorney
conduct investigations to the extent that GAL considers necessary to determine the best interests	investigate relevant facts and information to the case; advocate for child's best interests after reviewing facts/circumstances of case
	may request clarification from the court if the role of the attorney is ambiguous
Explicit access to child and information about the child granted; same for records	Explicit access to child and information about the child granted
if the child is age 4 or older, within a reasonable time, interview the child in a developmentally appropriate manner	if the child is age 4 or older, within a reasonable time, interview the child in a developmentally appropriate manner
n/a	must explain role to the child in developmentally appropriate manner, inform child that information child provides well be used to assist the court
n/a	May not disclose confidential communications between amicus attorney and child unless amicus attorney determines that disclosure is necessary to assist the court regarding the best interests of the child.
interview other relevant people or people with significant knowledge about the child, including educators, child welfare service providers, and any foster parent of the child	interview other relevant people or people with significant knowledge about the child, including educators, child service providers, and any foster parent of the child, parents, parties
obtain the child's expressed objectives in a developmentally appropriate manner; consider those expressed objective but not be bound by them	seek to determine a child's expressed objectives, and consider the impact on the child in how the attorney should present those wishes to the court; not bound by expressed wishes, but must express them to court
obtain and review copies of the child's relevant medical, psychological, school records, social service, law enforcement, etc.	obtain and review copies of the child's relevant medical, psychological, school records, social service, law enforcement, etc.
n/a	may consent or refuse to consent to an interview of the child by another attorney
n/a	take any action necessary and consistent with the child's interests to expedite proceedings
review, sign/decline to sign proposed agreements regarding the child	review, sign/decline to sign proposed agreements regarding the child

Additional duty to explain opposition to any proposed agreements	
encourage settlement and ADR	encourage settlement and ADR
Explicitly not a party, but receives copies of pleadings and things filed in the case and notice of all hearings; attend all hearings but NOT to call or questions witnesses unless the GAL is also a licensed attorney appointed in the dual role	participate in litigation as would an attorney for a party—request hearing/trial on merits, receive copies of pleadings or other documents filed, receive notice of hearings, attend all legal proceedings, etc.
Permitted/required to testify as both a called witness or as a narrative witness on own behalf (unless appointed in dual role as direct representation attorney)	May not testify
submit a report with recommendations relating to the child's best interests and the basis for the recommendations.	Cannot be compelled to submit a report; also cannot be compelled to produce attorney work product
Perform other tasks specified by the court	n/a

Training Requirements

An amicus attorney (attorney appointed to advocate for best interests) must be trained in child advocacy or be determined by the court to have experience equivalent to that training. An amicus attorney must "become familiar with the American Bar Association's standards of practice for attorneys who represent children in custody cases."

Volunteer advocates who are appointed to serve as GALs in civil custody (non-CHINS) type cases must have training that is designated for participation in cases of this nature, and their training cannot have been focused solely on termination/CHINS type cases. Charitable organizations comprised of volunteer advocates have the same training requirements; they may be appointed as GALs in civil custody cases, but they must have had training that "provides for the provision of services in private custody disputes". The Court can appoint as a GAL a person who has received the court's "approved training regarding the subject matter of the suit and who has been certified by the court to appear at court hearings as a guardian ad litem for the child or as a volunteer advocate for the child."

Funding

In civil custody cases, fees may be awarded to an amicus attorney or to a professional who holds a relevant professional license and who is appointed as guardian ad litem for the child, other than a volunteer advocate. The court determines the fees by reference to other reasonable and customary fees. The court orders a deposit to be made at the time of the appointment, and prior to the final hearing, orders additional amounts to be paid. A court may determined that the fees awarded to an amicus attorney or GAL are necessaries for the benefit of the child.

Oversight

A GAL or amicus attorney is not liable for civil damages arising from their duties or actions in course of their duties. This does not apply to actions taken that are done with conscious

indifference or reckless disregard to the safety of another, bad faith or malice, or that are grossly negligent or willfully wrongful.

Appendix J: Draft GAL Guidelines

Guardian ad Litem Guidelines

for custody, parenting time, guardianship, third party custody,
adoption, and other civil family law cases

Table of Contents

Qualifications

Guardians ad litem (GAL) as discussed in these guidelines pertain to individuals wishing to represent a child's best interest in civil family law cases, which include but are not limited to custody and parenting time matters in dissolution of marriage cases and in paternity cases; guardianship cases; third party custody actions in dissolution of marriage cases and in paternity cases; adoptions, grandparent visitation cases; and third-party visitation cases.

A GAL may be either an attorney or a non-attorney. A person who serves as a GAL should be a person with the necessary knowledge, skill, experience, training, education, or any other qualifications the Court finds necessary to enable the GAL to conduct a thorough and impartial investigation, and to effectively advocate for the best interests of the child.

An attorney may serve as a GAL as long as the attorney meets the qualification requirements and receives the necessary training. Attorneys serving as GALs are not considered to be acting as attorneys for the purposes of performance of the GAL roles and duties.

A non-attorney may serve as a GAL if the person: (1) meets the qualification requirements; (2) receives the necessary training; and (3) either: (A) is a person who possesses a professional licensure with an oversight body, such as medical, counseling, or addiction; or (B) will be associated with a court-approved program which provides GAL services; or (C) is a person who the GAL Oversight Commission has approved to operate independently based on their knowledge, skill, experience, training, education, or any other qualifications.

Qualifications: Criminal Background Checks

A person who wishes to serve as a GAL must pass a criminal background check that shows the person has committed no violent crimes, no crimes involving dishonesty, and no crimes involving children or the welfare of a child or dependent. Criminal background checks should be conducted for any jurisdiction in which the person has lived in the past five years.

The criminal background check must be submitted to the GAL Oversight Commission every four years in order to remain on the GAL Registry. If a person wishing to serve as a GAL is aware of a conviction on their record that does not appear in a background check, the person is required to disclose the conviction and any related information to the GAL Oversight Commission.

Qualifications: Child Abuse and Neglect Background Checks

A person wishing to serve as a GAL must pass a background check from the Department of Child Services in Indiana and any other jurisdiction where the person has resided in the past five years. The DCS check must be submitted to the GAL Oversight Commission every four years in order to remain on the GAL Registry. A person may not serve as a GAL if the person has a substantiated or equivalent finding of child abuse and neglect against them within the past fifteen years. If a person wishing to serve as a GAL is aware of a substantiation or equivalent finding on their record that does not appear in a background check, the person is required to disclose the substantiation or equivalent finding and any related information to the GAL Oversight Commission.

Qualifications: Conflicts

As outlined in the GAL Code of Conduct, a GAL shall not serve on a case when the GAL has prior involvement with a family or with the circumstances surrounding the case, such as providing services to the family or child in the past as a counselor, therapist, parenting coordinator, medical provider or other service provider. This provision does not prevent a GAL from being re-appointed to a case they previously served on as a GAL if there are post-dissolution matters filed. A GAL shall not simultaneously serve as the GAL on a case and a mediator, parenting coordinator, psychologist, or any other service provider.

Qualifications: Self Reporting

A GAL has an ongoing duty to notify the GAL Oversight Commission if the GAL falls out of qualified status, and no longer meets the minimum requirements. This includes new criminal convictions, new child abuse and neglect substantiations and failure to maintain ongoing training requirements. The GAL must notify the Oversight Commission within 10 days of any criminal convictions, child abuse and neglect substantiations or other disqualifying events.

Training Requirements

These training requirements apply to individuals seeking to become a qualified GAL listed on the GAL Registry after the effective date of these guidelines. Training requirements include both an initial required training, and continuing training to be completed every year.

Certain qualified individuals may seek a waiver of the initial training requirement. Individuals, both attorney and non-attorney, who served as a GAL for at least three (3) years prior to passage of these rules may seek a waiver of the initial training requirement

from the GAL Oversight Commission, and upon approval, may continue their services as a GAL without meeting the initial training requirements.

All persons, whether they are required to complete the initial training requirements or whether they received a waiver of the initial training requirements, must complete six (6) hours annually of ongoing training on topics outlined below.

Initial GAL Training Requirements

Unless an individual receives an approved waiver or another exception is made, a GAL must complete an initial GAL training course in order to serve as a GAL. A person seeking to become a GAL who has completed training to obtain or maintain their professional licensure or certification can use that training to completely or partially fulfill these requirements if their professional training meets the Initial GAL Training Requirements.

An initial GAL training course should provide at least twelve (12) hours of initial training related to GAL services. Any initial GAL training course must include training on:

- Legal framework of relevant types of child-related cases, including laws, relevant standards, and other legal considerations;
- Best interests assessment and advocacy;
- GAL investigative skills;
- Interviewing skills, rapport building and communication, methods of questioning, and child-focused interview skills;
- Appropriate GAL protocol;
- The roles and duties of a GAL in both their best interests advocacy and their roles and duties in court proceedings;
- Diversity, economic diversity, and multicultural awareness;
- Identification and treatment of child abuse and neglect;
- Early childhood, child and adolescent development;
- Family and child related issues, including family dynamics in the context of legal proceedings, substance abuse and its effects, and domestic violence and its effects;
- Trauma informed care;
- GAL ethical obligations and the GAL Code of Ethics.

Continuing GAL Training Requirements

A GAL must take six (6) hours of Continuing GAL Training classes annually. A GAL who has completed training to obtain or maintain their professional licensure or certification can use that training to completely or partially fulfill these requirements if their professional training meets the Continuing GAL Training requirements.

Courses which qualify for Continuing GAL Training may cover any of the topics below and may also include other topics which are relevant to GAL services. Examples include, but are not limited to:

- The effects of trauma, trauma-informed care, and adverse childhood experiences;
- Childhood development;
- Education and education-related legal matters for children;

- Updated or advanced legal topics pertaining to children, family law, or other relevant matters;
- Availability of services for children addressing special needs, child welfare, family preservation, medical, mental health, and educational needs, including placement/evaluation/diagnostic treatment services;
- Other legal, psychological, or social based topics relating to children and families;
- Other topics relating to conflict resolution for children and families;
- Other topics relating to GAL skills and development.

If a GAL fails to complete the required number of hours of Continuing GAL Training, that person is not eligible to serve as a GAL until the requirement is satisfied.

Roles and Responsibilities

Definition

A Guardian ad litem (GAL) is appointed by the Court to represent the child's best interests in civil family law cases, which include, but are not limited to: custody and parenting time matters in dissolution of marriage cases and in paternity cases; guardianship cases; third party custody actions in dissolution of marriage cases and in paternity cases; adoptions, grandparent visitation cases; and third party visitation cases.

The GAL shall represent the child's best interests at all stages of the proceedings. The GAL serves in their appointed capacity until the GAL is released from their appointment by the Court, replaced by an appointment of a new GAL, or the appointment otherwise terminates.

Best Interest Advocacy

In determining a child's best interests, the GAL should use the objective criteria outlined below. A GAL should avoid relying on subjective experiences or stereotypical views of individuals whose backgrounds differ from that of the GAL. A GAL must carefully consider each child's individual needs. The child's developmental level, including his or her sense of time, is relevant to an assessment of needs.

The GAL functions independently of all parties to the case and is a full and active participant in all stages of the proceedings. The GAL must investigate, assess, and evaluate the issues, and must advocate for the child's best interests.

The GAL must conduct a thorough, on-going, and independent investigation in accordance with advocacy for the child's best interests. The GAL must present the information obtained to the Court and the parties with respect to the child's social, emotional, physical, and educational well-being.

Contact with the child

Best interest representation must be child-centered and shall include spending time with the child, observing the child, talking with the child and assessing the child's perspective

and needs. Every child, even an infant or nonverbal child, needs to be seen to ascertain their condition, the home environment and the child's needs in order to make appropriate best interest recommendations. A GAL should have direct and sufficient contact with the child to complete an independent investigation of the child's circumstances and needs so as to be able to make sound, thorough and objective recommendations as to the child's best interest. This contact should occur in person to provide the GAL with firsthand knowledge of the child and his/her unique personality, abilities and needs. If in person contact cannot occur due to unusual circumstances, the GAL should request permission from the court to make virtual visits by Zoom or a similar method. In the rare instance in which contact with a child is not in the child's best interests, such as when a child's mental health is seriously endangered, the GAL shall notify the parties and the court of the concerns and seek further guidance from the court.

Investigation and Recommendations

Best interest representation requires that that GALs conduct a thorough, continuing and independent investigation of the case so that the GAL can make fact-based recommendations to the court. GALs may speak with all parties to the case without the presence of counsel. In making best interests recommendations, the GAL must ascertain the child's needs, including, at a minimum:

- Physical needs (food, clothing, shelter, medical care, safety, protection)
- Emotional needs (attachment between parent or caregiver and child)
- Developmental needs (education, appropriate help for children with disabilities)
- Psychological needs (counseling, testing, medications)
- Educational needs (tutoring, testing, school sports, and activities)

A GAL may use the Checklist of Factors for Assessing Best Interest of Child, and should consider factors related to parents' past conduct, observable present conduct, and related to future conduct as outlined in the Checklist.

Expressed Wishes of Child

In addition to the best interest's assessment and recommendation, a GAL must present to the Court the child's expressed wishes or desires, if any. If the child does not want those wishes or desires expressed to the Court, a GAL does not need to include them. If a GAL has reasonable and legitimate concerns for the child's safety if the child's wishes and desires are disclosed to the Court, the GAL may avoid disclosure of those wishes and desires or seek alternative methods of confidential disclosure by way of a protective order under the Indiana Trial Rules.

With respect to the duty of communicating a child's expressed wishes and preferences, the GAL is not required to pressure the child for this information. The GAL, as appropriate to the age and maturity of the child, should: (a) assure the child's views will be made known to the Court even if inconsistent with the opinion of the GAL; (b) ensure that the child is never compelled to choose between parents or placements; and (c) ensure that the child not be required to make choices about acrimonious issues.

Appointment and Appointment Orders

The Court may appoint a GAL when the Court finds that the child's best interests are not adequately protected by the parties and that separate representation of the child's best interests is necessary. The Court may make such appointment on its own motion at any stage of the proceeding. The parties to a case may agree to a GAL, subject to Court approval. The Order of Appointment must include the cost to each party for the services of the GAL.

A GAL may only be appointed by written Court order. The GAL represents the child's best interests in a legal proceeding from appointment until termination of the appointment. Factors that a Court may consider in appointing a GAL include, but are not limited to:

- the fundamental right of parents to the care, custody, and control of their children;
- the Court's need for additional information and/or assistance;
- the financial impact on the parties and the ability of the parties to pay reasonable fees to the GAL;
- the cost and availability of alternative methods of obtaining the information and evidence necessary to resolve the issues in the proceeding without appointing a GAL;
- any alleged factors indicating a particular need for the appointment of a GAL, including:
    i. the circumstances and needs of the child, including the child's age and developmental level;
    ii. any desire for representation or participation expressed by the child;
    iii. any inappropriate adult influence on or manipulation of the child;
    iv. the likelihood that the child may be called as a witness or be questioned by the Court in chambers;
    v. any excessive acrimony indicating the parties' lack of objectivity concerning the needs and best interests of the child;
    vi. any interference, or threatened interference, with custody, access, visitation, or parenting time, including abduction or risk of abduction of the child;
    vii. the likelihood of a geographic relocation of the child that could substantially reduce the child's time with a parent, a sibling, or another individual with whom the child has a close relationship;
    viii. any conduct or action during the exercise of parenting time by a party or an individual with whom a party associates that raises serious concerns;
    ix. any physical, educational, or mental health needs of the child, parents or other relevant individuals that require investigation or advocacy;
    x. whether the above referenced considerations and factors can be adequately addressed in a brief, focused, assessment or other limited appointment; and
    xi. any other factors necessary to address the best interests of the child.

The Court will provide, in its Order of Appointment, as much detail and clarity as possible concerning the GAL duties in the particular case and will make the parties aware of the GAL Guidelines. Providing such specificity will assist the parties in understanding the role of the GAL and enable the Court to exercise effective oversight of the GAL.

A GAL appointment should include a specific duration of time for the GAL to serve, such as until final hearing on a pending petition or until a specific goal or service is accomplished.

GAL appointments may be extended beyond this time by Court order indicating the necessity of the extension of the appointment. A GAL may be appointed to monitor a case, but such appointments should be for a limited rather than an indefinite period of time.

Role in Court Proceedings

Except as otherwise provided, a GAL has the status of a party to the case and has the ability to fully participate in every aspect of the Court proceedings. A GAL may be represented by counsel or may proceed without counsel.

The GAL or their counsel is authorized to engage in court proceedings and ancillary proceedings. This includes, but is not limited to, the following:

- Attending pretrial conferences;
- Attending trials, mediations, negotiations, and other settlement processes;
- Initiating negotiations and mediation (but not serving as the mediator) when appropriate and beneficial to the child;
- Making discovery requests and receiving discovered information from other parties;
- Filing pleadings, motions, and responsive pleadings in furtherance of the child's best interests;
- Requesting hearings;
- Being present in the courtroom for all aspects of the proceedings;
- Subpoenaing witnesses;
- Calling and cross-examining witnesses;
- Submitting evidence, filing reports, and testifying;
- Submitting findings of fact and conclusions of law;
- Preserving issues for appeal, and initiating or participating in an appeal in appropriate circumstances; and
- Taking such actions during the pre-trial, trial and post-trial proceedings as are necessary to advocate for the best interests of the child.

Duties of the GAL

In fulfilling the role of the GAL, the GAL has the following duties:

- Filing an Oath and Acceptance upon acceptance of the GAL appointment;
- Reviewing the case file and all relevant pleadings and documents contained in the Court's case file;
- Reviewing any non-confidential case files and documents of related cases;
- Obtaining and reviewing records relevant to the case and the child's best interests;
- Informing other parties or counsel of the GAL appointment, and that the GAL should be served with copies of all pleadings filed in the case and any discovery exchanges, and is entitled to notice of and to fully participate in all hearings related to the appointment;
- Meeting with or observing the child as soon as practicable, unless there is compelling reason to forego doing so;
- Tailoring all communications with the child to the child's age, level of education, cognitive and emotional development, cultural background, and degree of language acquisition, using an interpreter if necessary;

- Informing the child in a developmentally appropriate manner about the GAL's role and duties;
- Meeting with or observing the child with the parties, and meeting with or observing the child in a more private or neutral setting, where possible and necessary;
- Communicating the child's expressed wishes and desires, even if those expressed wishes and desires stand in opposition to the GAL's best interests' recommendations;
- Reviewing case-related records of social service agencies and other service providers;
- Reviewing relevant medical, social, educational, psychiatric, law enforcement, and psychological evaluations or records;
- Contacting, meeting with, and interviewing all the parties to a case;
- Interviewing individuals who play a significant role in the child's life;
- Identifying themselves to all persons interviewed as the GAL and explaining the role of the GAL as necessary;
- Attending meetings involving issues within the scope of the GAL appointment;
- Reviewing other evidence related to the best interests factors and other custody, parenting time, guardianship, third party custody, and grandparent visitation factors;
- Filing a report with the Court as requested in any appointment or subsequent orders;
- Notifying the Court in writing of any agreement with or opposition to any settlement agreement or mediated agreement, and the basis for that agreement or opposition;
- Assisting the parties and the Court in identifying and accessing services for the child and family and verifying implementation of such services;
- Obtaining information regarding the child and the child's medical, psychiatric, educational, or other services provided to the child without obtaining the consent of the child's parents, guardians, or custodians;
- Obtaining the consent of the child with respect to gathering records and information regarding the child's medical, psychiatric, educational, or other provided services, if the child is of sufficient age and capable of forming rational and independent judgments;
- Seeking court orders referring a child for any needed services;
- Taking a position on any requests for in chambers interviews or requests for the child to testify, and filing motions or other pleadings to further that position;
- Reporting child abuse and neglect to the Department of Child Services as required by Indiana Law;
- Adhering to the GAL Code of Ethics.

With respect to the duty of taking a position on any requests for in chambers interview with or testimony from the child, the GAL should protect and shield the child from being required to testify or otherwise provide information in Court proceedings. The potential negative impact of the child testifying in Court shall be considered and the GAL shall seek imposition of less harmful methods such as in-camera interviews when appropriate. This shall be construed in light of constitutional and statutory limitations.

GAL Files and Reports

Upon request, the GAL must make their GAL file available to any party or counsel for party requesting the file as outlined in Indiana law. The GAL should produce underlying data and reports, complete texts of diagnostic reports made to the GAL which the GAL was able to obtain, and the names and contact information of all persons with whom the GAL consulted or interviewed. Any party or counsel for a party may seek copies of this information and that party or counsel is responsible for any costs pertaining to making such copies.

A GAL may seek a protective order to prevent disclosure of highly sensitive information in the GAL file. A GAL may also seek orders from the Court protecting the GAL file if the GAL reasonably believes that a party is attempting to use the GAL as a vehicle to obtain information to which the party is not entitled, or if the GAL can reasonably demonstrate that a party is making multiple file requests in an effort to hinder the GAL's investigation.

The GAL may prepare written reports and submit them to the Court at any stage of the proceedings. If an appointment order directs a GAL to submit a written report, then the GAL shall submit a written report to the Court. A GAL's report does not prevent a GAL from testifying at any proceedings.

A GAL report must be provided to the Court and to counsel or the opposing parties ten days in advance of any hearing, unless good cause is shown, or the time requirement is waived by all parties.

A GAL report may be received into evidence and may not be excluded on hearsay grounds if the GAL report is timely submitted to the Court, counsel, and the parties, and if the GAL has properly maintained and provided their GAL file.

A GAL report should include information about the child, including the child's expressed wishes or desires, if the child expressed any. A report should also contain information from other parties, collateral sources, or the child pertaining to the child's best interests. Other items which may be contained in a GAL report include, but are not limited to:

- Names of all persons contacted, and the date they were last contacted;
- The dates and location that the child was seen;
- A summary of relevant interviews and conversations;
- A summary of relevant records and information obtained; and
- Recommendations as to what is in the child's best interest as requested in the Order of Appointment and recommended services.

GAL reports should be filed as confidential documents excluded from public access pursuant to the Indiana Rules on Access to Court Records, Rule 5.

GAL Code of Ethics

This Code of Ethics (COE) provides Indiana Guardians ad Litem (GAL) with guidelines for professional behavior and ethical conduct. This COE is applicable to every GAL serving in family law proceedings including divorce, custody, paternity, third party custody and guardianship. Each GAL will review the COE and acknowledge that they will abide by it.

CONDUCT

1. GAL will abide by this COE and all laws, standards and regulations governing their activities.

2. GAL will uphold the credibility, integrity and reliability of GAL advocacy by conducting all business in an honest, fair, professional, and compassionate manner.

3. GAL will not use their authority inappropriately, nor condone any illegal acts or unethical practices related to their role and responsibilities.

4. GAL will not use their position or relationships with families on cases in which they are appointed as the GAL for inappropriate personal, professional or financial gain.

5. GAL will avoid any action that could adversely affect the confidence of the public in the integrity of the use of a GAL to advocate for a child's best interest.

6. GAL will maintain independence, objectivity, and the appearance of fairness in dealing with parties and professionals, both inside and outside of the courtroom. GAL is an officer of the court and shall treat parties with respect, courtesy, fairness, and act in good faith in completing their GAL responsibilities.

7. GAL will demonstrate candor to the court at all times; GAL shall not knowingly make a false statement of fact or law to the court or fail to correct a false statement of fact or law previously made to the court and shall not offer evidence that he or she knows to be false.

8. GAL shall complete their responsibilities in a timely manner and will not unnecessarily delay court proceedings. GAL shall timely inform the court of relevant information. GAL will decline appointment or withdraw when the GAL does not have the time or ability to effectively advocate for a child.

9. GAL will not initiate, permit or participate in any *ex parte* communications with the judge outside the presence of the parties concerning a pending or impending proceeding except as authorized by court rules or statutes.

10. GAL will not practice, condone, facilitate or participate in any form of discrimination on the basis of race, color, sex, sexual orientation, age, religion, national origin, marital status, political belief, or mental or physical handicap.

11. GAL will take necessary steps to avoid any actual or apparent conflicts of interest on cases. GAL shall avoid self-dealing or associations for which the GAL might indirectly

benefit, other than for compensation as a GAL. GAL shall take immediate steps to resolve any potential conflict of interest or impropriety, and shall advise the court, attorneys and parties of actions taken, and then ask the court for guidance regarding resolving the conflict. A GAL shall not accept or maintain appointments if their performance as a GAL may be limited by the GAL's responsibilities to another client or third person or the GAL's own interests.

12. GAL shall not act as a mediator or a parenting coordinator for the same case in which they have been appointed to serve as the GAL. GAL will not provide therapy or other services to the family on a case in which they are serving as the GAL.

13. GAL will exercise independent judgment on behalf of a child and advocate solely for whatever is in the best interest of the child. GAL will resist influences and pressures that interfere with impartial judgment and will report honestly and impartially to the court on what is in the best interests of the child.

14. GAL shall not serve on a case when the GAL has prior involvement with a family or with the circumstances surrounding the case unless there is full disclosure of the potential conflict to all parties and any perceived or actual conflict is waived. This provision does not prevent a GAL from being re-appointed to a case they previously served on if there are post-dissolution matters filed.

15. GAL shall maintain documentation to substantiate recommendations and conclusions. GAL records are available to the parties and can be reviewed upon request as provided by applicable GAL statutes.

CONFIDENTIALITY

16. GAL will respect the right to privacy of all individuals. GAL will maintain strict confidentiality of all information related to a case and will acknowledge their obligation to maintain confidentiality in their Oath and Acceptance for each case. GAL will not disclose confidential information relating to a case to any person who is not a party to the case except as necessary to perform the responsibilities of a GAL, in reports to the court and as provided by law or court order. GAL will not use confidential information obtained through their work for personal benefit.

17. GAL shall advise the parties and the child that there is no GAL privilege and that any statements or documents shared with the GAL can be shared with the parties to the case, their attorneys, and the court.

KNOWLEDGE AND UNDERSTANDING

18. GAL must meet the qualifications and have the training outlined in the GAL Guidelines. GAL must also take 6 hours of continuing training every year on topics related to serving as a GAL and working with families and children.

19. GAL shall maintain their qualifications to be eligible to be listed on the GAL Registry and shall promptly notify the Court of any grounds for disqualification from serving as a GAL or unavailability to serve.

20. GAL must respect a child's inherent right to grow up with dignity in a safe and permanent environment that meets that child's best interests.

GAL REGISTRY

21. GAL seeking to be included in the GAL Registry maintained by the Indiana State Office of GAL/CASA must operate in accordance with this COE and the GAL Guidelines.

COMPLIANCE

22. The Director of the Indiana State Office of GAL/CASA shall monitor compliance with this COE in conjunction with the Indiana Supreme Court GAL Family Law Oversight Commission.

Appendix K: Sample GAL Appointment Order

ORDER APPOINTING GUARDIAN AD LITEM AND GRANTING GUARDIAN AD LITEM FEE

The Court now finds that the appointment of a Guardian ad Litem is desirable to represent and protect the best interest of the child in this proceeding. IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That _____ is appointed as the Guardian ad Litem for the following child or children: _____.
2. The Guardian ad Litem shall act in and advocate for the best interests of the children named in this appointment order.
3. The reasons and issues necessitating the appointment of the Guardian ad litem include but are not limited to: _____.
4. The Guardian ad Litem is hereby made aware of the following hearings, petitions, and deadlines: _____.
5. Relevant contact information for the parties to this proceeding includes: _____ _____.
6. In addition to the duties set forth in the Guardian ad Litem Guidelines, the Court orders that the Guardian ad Litem has the following duties specific to this proceeding (outline the specific issues to be investigated, actions to occur and deadlines for the GAL report): _____
7. The Guardian ad Litem shall not exceed the roles, rights, and duties provided to the Guardian ad Litem in both this Court order and in the Guardian ad Litem Guidelines. To the extent that there is a conflict between this Court order and the Guardian ad Litem Guidelines, this Court order controls.
8. The Guardian ad Litem shall adhere to the Guardian ad Litem Code of Ethics.
9. The Guardian ad Litem is empowered with and responsible for the enumerated rights, roles, and duties as described in the GAL Guidelines.
10. Upon presentation of this Order, any medical, psychiatric or other expert person who has served the child, shall permit the Guardian ad Litem access to records, reports, x-rays, photographs or other relevant matters as to the child, without consent by the child's parents, guardians, or custodians.

11. All parties and their attorneys are hereby ordered to cooperate with the Guardian ad Litem regarding interviews with and investigation by the Guardian ad Litem and shall allow the Guardian ad Litem access to the child in both of the parents/ homes.
12. The Guardian ad Litem assigned to this cause shall maintain any information received from any source as confidential and will not disclose the same except in reports to the Court and parties to this cause.
13. The Guardian ad Litem shall appear at all hearings or proceedings concerning custody and/or visitation scheduled in this cause and shall assure proper representation of the child's best interest at said hearings.
14. The Guardian ad Litem shall be notified by the attorneys for the parties of any hearings, investigations, depositions, mediation or other proceedings concerning the child and shall receive notice prior to any action taken on behalf of the child by any party. The Guardian ad Litem is ordered to send copies of all pleadings or reports to all attorneys of record when said reports or pleadings are filed with the Court.
15. The Guardian ad Litem fees shall be determined and allocated as follows: _____ _____.
16. The Guardian ad Litem serves until released by order of this Court. This Guardian ad Litem appointment is intended to last until a final order on pending petitions is issued, or until another specified date or goal is achieved.

SO ORDERED:_____.

_____
JUDICIAL OFFICER

DISTRIBUTION

Appendix L: Evidence for Parenting Programs

Compilation of Parenting Programs for the Indiana Family Law Taskforce
Prepared by Claire Tomlinson, PhD Student, Department of Psychological and Brain Sciences Indiana University—Bloomington

Key: Green: promising programs with better evidence
Red: programs with shown negative findings

Evidence-Based Parenting Programs (8-12 sessions, in person) targeted to divorcing and separating parents:

****Note: These programs have excellent evidence to their effectiveness in both laboratory and applied environments. However, many courts have expressed concern related to program attendance due to the length of the program, coupled with the resources required.**

- New Beginnings Program (NBP; Wolchik et al. (1993)
  - Studies of NBP have indicated improvements in parenting and child grade-point average, and reductions in child mental health problems, child externalizing problems and child involvement in the criminal justice system (e.g., Wolchik et al., 1993; Wolchik et al., 2000; Sandler et al., 2020)
- Parenting Through Change (PTC; Forgatch & DeGarmo, 1999)
  - Last approximately 12-16 sessions. NBP and PTC both emphasize the importance of appropriate discipline strategies, and include components specifically related to the separation or divorce process, such as interparental conflict.
    - Randomized Controlled Trials of PTC indicate that parents in the PTC group, in comparison to parents receiving no treatment, reported improved parenting practices and improved child outcomes at both six month and 12-month follow-ups (Forgatch & DeGarmo, 1999; Martinez & Forgatch, 2001; DeGarmo et al., 2004)
- Family Transitions Triple P (Stallman & Sanders, 2014)
    - One RCT, families assigned to intervention condition sustained improvements in the levels of parental distress (depression, anxiety, stress, and anger) and improvements in coparent communication and acrimony

Shorter programs targeted to divorcing and separating parents (approximately 4 hours):

****Note: None of the following studies were evaluated using rigorous methods, such as a randomized controlled trial, equal groups, use of a control group in general, or standardized long-term measures (i.e., interpret findings with caution)**

Sigal et al., (2011) provides a good review of short parenting programs. See this paper for details.

- Assisting Children through Transition (ACT; Pedro-Carroll et al., 2001
    - Increased knowledge of effects on kids surrounding divorce
    - Improvements in parent perception of mastery of skills taught in the program and willingness to incorporate these strategies outside of class

- Children First (Kramer & Kowal, 1998)
    - Improvements in parental knowledge and attitudes and likelihood of adaptive co-parenting
    - No differences in re-litigation across groups
- Children in the Middle (Arbuthnot & Gordon, 1996)
    - Parents more aware of child views, parents spent more time with child, children had fewer absences and visits to physician
    - Decreases in re-litigation two years following resolution of case
- Cooperative Parenting and Divorce (Whitehurst et al., 2008)
    - Increase in parental relationship
    - Improved parenting ability
    - Improved ability to communicate with child
- Court Care Center for Divorcing Families (CCCDF; Homrich et al., 2004)
    - Decreased interparental conflict
- Criddle et al., 2003
    - Decreases in re-litigation
- Dads for Life Parent Education Class (8 1.5 hour sessions; Braver et al., 2005)
    - Improvement in internalizing behaviors of the parent in those with high baseline issues
    - Decline in conflict two years following the program (Cookston et al., 2007)
- Erickson & Ver Steegh, 2001
    - Increased knowledge of effects on kids surrounding divorce
- Family Information Session (Ellis & Anderson, 2003)
    - Those who participated had fewer case conferences, filed fewer motions, were active for a shorter period
- Families in Transition (Zimmerman et al., 2004)
    - Resident mothers who attended the class (compared to mothers who did not attend the class) reported more positive family functioning, fewer symptoms of psychological distress, and better divorce adjustment
- Focus on Kids (Schramm & Calix, 2011)
    - At follow-up (10 month), parents showed decreased coparenting conflict
- Kids in Divorce and Separating (KIDS; Shifflett & Cummings, 1999)
    - Improvements in parenting quality
    - Decreased interparental conflict (maintained at follow up)
    - Increased knowledge of effects on kids surrounding divorce
- Orientation for Divorcing Parents (Buehler et al., 1992)
    - Intervention reduced social support needs
- Parenting for Divorced Fathers (Devlin et al., 1992)
    - Fathers rate themselves as improved and reported that they talked to their children more often
- Parents Beyond Conflict (McIsaac & Finn, 1999)
    - Improvements in parent perception of mastery of skills taught in the program and willingness to incorporate these strategies outside of class
- Parents Forever: Education for Families in Divorce Transition (Brotherson et al., 2010)
    - Improved knowledge of effects of divorce on kids

    - Slight increase in conflict among those who participated in the program (Cronin et al., 2017)
- Parenting Together (9-hour program; 3 sessions; Stolz et al., 2017)
    - Coparenting course designed exclusively for never-married parents. At 6-week follow-up, results indicated positive changes in participant knowledge, coparenting attitude, child triangulation behavior, and coparenting teamwork behavior
- Parenting Apart: Effective Co-Parenting (Brandon, 2006)
    - Reduced resentment, less putting the child in the middle, less insulting the other parent when angry, however, less cooperation at follow up.
- PEACE Program (McKenry et al., 1999)
    - Marginal increase in perceived closeness with the child
    - Increased knowledge of effects on kids surrounding divorce
    - No differences in conflict across groups

- Fackrell et al., (2011) did a meta-analysis of 19 court-related programs, and found that among those with a control group and intervention group, those in the intervention group showed improved parent-child relationships and improved coparenting cooperation, reduced coparenting conflict, reduced child exposure to interparental conflict.

Online Short Parenting Programs targeted at divorcing and separating parents

- Children in the Middle (Gordon, n.d.).
    - Six months after the completion of the CIM, relative to parents in the comparison group, parents in the intervention group self-reported that they were less likely to put their children in the middle of their conflict or to be angry with the other parent and reported that their children had fewer school absences and visits to the nurse.
    - Tentative findings from an ongoing randomized controlled trial through the Indiana University research team indicate that on average, parents neither benefit nor are harmed by the program, either immediately after program completion or at one-year post study entry. However, those analyses were based on everyone who was assigned to a program, including the many parents who did not actually complete the program. We plan to conduct analyses on only those who completed the program compared to the no program condition in the near future. We hypothesize to see differences between the parents who completed the program compared to those not assigned to a program. Published findings are to follow these analyses.
- Two Families Now (TFN; Caraway & Jones, 2011)
    - At the two-week follow up, compared to the control group, those who completed TFN had a significant increase from baseline in knowledge of, and intent to use, skills taught in the program.
    - By the six-week follow up, compared to the control group, those in TFN had a significant increase from baseline in knowledge of and confidence in using skills, parent satisfaction with social support, and parent reported child pro-social behavior.

    - Tentative findings from an ongoing randomized controlled trial through the Indiana University research team indicate that on average, parents neither benefit nor are harmed by the program, either immediately after program completion or at one-year post study entry. However, those analyses were based on everyone who was assigned to a program, including the many parents who did not actually complete the program. We plan to conduct analyses on only those who completed the program compared to the no program condition in the near future. We hypothesize to see differences between the parents who completed the program compared to those not assigned to a program. Published findings are to follow these analyses.
- With respect to Children in the Middle and Two Families Now (immediately above), see Holtzworth-Munroe, A., Applegate, A.G., Tomlinson, C.S., Rudd, B.R. (2019). A Qualitative Interview Study Regarding Barriers and Facilitators of Engagement in Two Online Education Programs for Separating or Divorcing Parents. *Research Monograph*. *Fatherhood Research and Practice Network (FRPN),* https://www. frpn.org/asset/frpn-grantee-report-qualitative-interview-study-regarding-barriers-and-facilitators-engagement (grant report attached)
- Focus on Kids (Schramm & McCaulley, 2012)
    - Study compared online vs. in-person version of the program. Both versions showed similar positive effects (decreased conflict)
- ProudtoParent (Asher & Asher, n.d.) (now UpToParents)
    - Potential negative impacts (e.g., in a 2 by 2 condition randomized controlled trial of parents in contested paternity establishment hearings in Title IV-D court, parents who were asked to complete the program between paternity establishment and their child support hearing were less likely to reach agreement and more likely to relitigate their case than parents who were asked to complete their program on the same day as their child support hearing; parents who completed their program on the same day as their child support hearing reached agreement at similar rates as parents who did not complete the program (Rudd et al., 2015; 2017) (articles attached)

- See also Bowers, J. R., Mitchell, E. T., Hardesty, J. L., & Hughes, R., Jr. (2011). A review of online divorce education programs. Family Court Review, 49, 776-787.

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Appendix M: Chart of Statutory Inconsistencies

Statutory Inconsistencies

Type of Case	Statutes
Juvenile Paternity	IC 31-30-1-12(a)/IC 31-30-1-13(a) (concurrent original jurisdiction w/ CHINS) IC 31-30-1-12(b)/IC 31-30-1-13(b) (modification of custody where child is CHINS) Definition and concept of parent in paternity and CHINS--inclusion of alleged parent and possible modification of statutes to explicitly include alleged father (see IC 31-34-10-2, IC 31-9-2-88(b)) IC 31-14-4-1(6) and IC 31-14-4-1(7) (establishing paternity in CHINS case) Also consider implications with UCCJA and PKPA
Dissolution w/ Children	IC 31-30-1-12(a)/IC 31-30-1-13(a)(concurrent original jurisdiction w/ CHINS) IC 31-30-1-12(b)/IC 31-30-1-13(b) (modification of custody where child is CHINS) Also consider implications with UCCJA and PKPA
CHINS	IC 31-30-1-1(2) (exclusive original jurisdiction) IC 31-30-2-1 (continuing exclusive jurisdiction) IC 31-30-1-1(10) (CHINS/GU interaction) IC 31-30-1-5(2); IC 31-35-2-3 (TPR petition to be filed in juvenile court) IC 31-19-9-1(a)(3) (agency consent to adoption) IC 31-30-1-1(2) (exclusive jurisdiction over divorces where child adjudicated as CHINS) IC 31-30-1-12(a)/IC 31-30-1-13(a) (concurrent original jurisdiction w/ JP, DC) IC 31-30-1-12(b)/IC 31-30-1-13(b) (modification of custody where child is CHINS)
Adoption	IC 31-19-1-2 (Probate jurisdiction over AD) IC 31-30-1- 5(2) (Concurrent jurisdiction w/ juvenile court over TPR) IC 31-19-9-1(a)(3) (agency consent to adoption) IC 31-19-10-1(a) (standing to contest an adoption, see also: IC 31-19-9-1(3) and In Re Infant Girl W., 845 N.E.2d 229, 238 (Ind. Ct. App. 2006))

	IC 31-34-21-5.8(b)(2) (DCS potentially implied ability to initiate adoption petition, see also In Re Parent-Child Relationship of S.M., 840 N.E.2d 865, 871-72 (Ind. Ct. App. 2006)) IC 31-35-2-6.5(c)(3) (Adoptive petition input into TPR proceedings) IC 31-19-2-13 (temporary custody with pending adoption and DCS prohibition) IC 31-19-9-1(a)(3) and IC 31-19-9-8(a)(10) (guardian or lawful custodian must give consent--codify DCS as part of this? See A.D. v. Clark, 737 N.E.2d 1214, 1217 (Ind. Ct. App. 2000)) IC 31-19-11-2, -5(a) (adoption's court ability to determine custody if adoption dismissed and DCS involvement) IC 31-19-2-14 (consolidated paternity and adoption proceedings and determining custody if adoption dismissed; implications of paternity established during CHINS proceeding) IC 31-17-2-11 (allows for temporary custodians; no analogous provision in IC 31-14) IC 31-17-2-25 (allows for emergency placement of child; no analogous provision in IC 31-14) Adoption Notice Statutes have internally conflicting provisions (IC 31-19-9-8(a)(7) and IC-31-19-9-9; IC 31-19-9-8(a)(8) and IC 31-19-11-6; IC 31-19-9-9 and IC 31-19-2.5-4; IC 31-19-9-10 and IC 31-19-2.5-4; IC 31-19-9-18 and IC 31-19-2.5-4).
Guardianship	IC 31-30-1-1(10) (CHINS/GU interaction) 465 IAC 2-8-0.5-13 (Counsel for DCS assists with setting up guardianship and guardianship funds) IC 31-30-1-6(b)(2) (Statutory obligation to refer guardianship petition to juvenile court) IC 31-34-21-4 (guardian's involvement in a CHINS case) IC 29-3-8-9 (DCS involvement in guardianship case)
CASA/GAL	IC 31-9-2-28 and IC 21-9-2-50 (GAL/CASA defined) IC 31-15-6-1 (GAL appointment in dissolution) IC 31-17-6-1 (GAL appointment in custody actions) IC 31-32-3-1 (GAL appointment in paternity)

	IC 31-17-2-12 (Investigation and report concerning custodial arrangements for child - GALs in Dissolution cases) IC 29-1-1-20 (Incapacitated persons; unknown persons; guardians - GALs in Guardianship cases) IC 29-3-2-3 - mandatory appointments in Guardianship cases IC 31-19-16-6 (GALs in postadoption visitation cases) IC 31-34-10-3 (GAL/CASA appointment in CHINS cases) IC 31-32-3-3 (child's attorney may be GAL/CASA) IC 33-24-6-4 (State Office of GAL/CASA) IC 31-32-3-1 (juvenile court may appoint GAL/CASA at any time) IC 31-30-1-5; IC 31-34-19-3 (Juvenile mental health cases)
Indiana Courts	IC 33-33 (COURT SYSTEM ORGANIZATION IN EACH COUNTY) IC 33-28-1-2 (Jurisdiction of county Circuit Courts) IC 33-29-1-1.5 (Jurisdiction of county Superior Courts - does not apply to Marion County) IC 33-23-6 (Circuit Court and Superior Court Domestic Relations Alternative Dispute Resolution)
Marion County Specific	IC 33-33-49-14 (Executive committee; divisions of court) IC 33-33-49-15 (Powers and duties of executive committee; appointment and powers of commissioners) IC 33-33-49-16 (Probate hearing judge; probate commissioner; juvenile referee; bail commissioner; master commissioner; powers and duties) IC 33-33-49-20 (Laws applicable to court) IC 33-33-49-24 (Transfer of cases from circuit court) IC 33-33-49-25 (Transfer of cases to circuit court) IC 33-33-49-26 (Authority of circuit judge to sit in superior court)

Appendix N: Chart Comparing States Informal Trials Rules

	Primary Citation(s)	Status	Form of Adoption
Alaska	Alaska Rules of Court Rules of Civil Procedure Rule 16.2 - Informal Trials in Domestic Relations Cases	Applies to entire state Effective April 15, 2015 Review and report after three years	Statewide court rule
Idaho	Idaho Rules of Family Law Procedure Rule 713. Informal Trial	Applies to entire state Effective statewide July 1, 2015 (Originally adopted as IRCP Rule 16 (p) in 2008)	Statewide court rule
Oregon	11th Judicial District Deschutes County Circuit Court Supplementary Local Rules Rules 7.045 and 8.015	Pilot in Deschutes County Effective May 29, 2013 Statewide rule under consideration	Local court rule (Statewide court rule under consideration)
Utah	Judicial Council Rules of Judicial Administration Rule 4-904. Informal trial of sui;mort, custodx and 12arent-time.	Applies to entire state Effective April 12, 2012	Statewide court rule

	Case and Hearim?: Tvnes	How Selected	Waiver
Alaska	Trials in actions of divorce, property division, child custody, and child, including motions to modify.	Opt-in. In a case proceeding to trial, the court may offer the parties the option of electing the informal trial process.	Parties must consent to the process. An explicit waiver of the rules of evidence is not included in the rule.
Idaho	Trials in actions for child custody and child support.	Opt-in. Parties must waive the application of the Idaho Rules of Evidence and the normal question answer manner of a trial.	Consent and waiver to be given verbally on the record or in writing on a form developed by the Supreme Court.
Oregon	Trials in original actions or modifications for divorce, separate maintenance, annulment, child custody and child support.	Forced choice/opt-in. Parties must select the type of trial they would like at the pre-trial conference. Both parties must select an informal trial, otherwise a traditional trial is scheduled.	Not explicitly required in the rule, however the trial selection form contains a written waiver and it is the practice of the court to engage the parties in an oral waiver on the record at the time of trial.
Utah	Trials in actions for child support, child custody and parent-time.	Opt-in. Upon waiver and stipulated motion, orally or in writing, by the parties.	The court must find that the parties have made a valid waiver of their right to a regular trial.

	General Process	Evidence	Witnesses
Alaska	Opening (summary of issues to be decided), tbe parties' present case in turn, opportunity to respond to factual information presented by opposing party, closing.	Parties may offer any relevant documentation. Court will determine admission and weight. Court may require additional documentation. Letters from children regarding custody discouraged.	Only the court may question a party. Parties may advise tbe court of additional questions or issues tbey would like tbe court to address witb the opposing party. Exclusion of witnesses is implicit.
Idaho	The moving party speaks to tbe court regarding their position(s). The Court questions tbe party to develop required evidence. Process repeats for opposing party.	Parties may offer any documentation they wish tbe court to consider. Court shall determine weight, if any, given to each document. Court may order the record be supplemented.	Only the court may question a party. Parties may advise the court of additional questions or issues tbey would like tbe court to address witb the opposing party. Exclusion of witnesses is implicit.
Oregon	Opening (summary of issues to be decided), tbe parties' present case in turn, opportunity to respond to factual information presented by opposing party, closing.	Parties may offer any relevant documentation. Court will determine admission and weight. Court may require additional documentation. Letters from children regarding custody discouraged.	Only tbe court may question a party. Parties may advise the court of additional questions or issues tbey would like tbe court to address witb tbe opposing party. Exclusion of witnesses is implicit.
Utah	The moving party speaks to tbe court regarding tbeir position(s). The Court questions tbe party to develop required evidence. Process repeats for opposing party.	Parties may offer any documentation they wish tbe court to consider. Court shall determine weight, if any, given to each document. Court may order the record be supplemented.	Only the court may question a party. Parties may advise the court of additional questions or issues tbey would like tbe court to address witb tbe opposing party. Exclusion of witnesses is implicit.

	Exnert Witnesses	Role of Attornevs	Other
Alaska	Expert reports may be admitted without testimony. If expert testifies, all parties, their attorneys and the court may question the expert.	May provide opening summary, propose questions for the court to ask of the opposing party or issues to explore, question expert witnesses and closing statement.	Court may disallow a request to withdraw from the procedure if it would prejudice the other party or postpone the trial date absent a showing of good cause.
Idaho	Guardian ad Litem and expert reports may be admitted without testimony. If expert testifies, all parties, their attorneys and the court may question the expert.	May propose questions for the cour. to ask of the opposing party or issues to explore, question expert witnesses and make legal argument.	
Oregon	Expert reports may be admitted without testimony. If expert testifies, all parties, their attorneys and the court may question the expert.	May provide opening summary, propose questions for the court to ask of the opposing party or issues to explore, question expert witnesses and make legal argument.	A party who previously agreed to the informal trial may motion the court to opt out of the informal trial not less than 10 days prior to trial. The Court will make effort to issue prompt judgments. The Court may modify procedures as justice and fundamental fairness requires.
Utah	If there is an expert, any report is entered as the Court's exhibit and the expert may be questioned by the parties, their attorneys and the court.	Following the opposing party's testimony, may identify areas of inquiry and the Court may make the inquiry.	Entry of an order by the court is explicitly included in the Rule. If the order is a final order, it may be appealed on any grounds that do not rely upon the Utah Rules of Evidence.

ALASKA

Alaska Rules of Court
Rules of Civil Procedure
Rule 16.2 - Informal Trials in Domestic Relations Cases

Rule 16.2. Informal Trials in Domestic Relations Cases.
(a) Scope. Informal trials may be held to resolve some or all issues in actions for divorce, property division, child custody, and child support, including motions to modify. This rule applies to trial proceedings and does not modify other Civil Rules.
(b) General. An informal trial is an alternative trial procedure to which the parties, their attorneys, and the court voluntarily agree. Under this model, the court may admit any evidence that is relevant and material, despite the fact that such evidence might be inadmissible under formal rules of evidence, and the traditional format used to question witnesses at trial does not apply. In most cases, the only witnesses will be the parties. In the discretion of the court, other relevant witnesses may be called.
(c) Election. In a case that is proceeding to trial, the court may at any time offer the parties the option of electing the informal trial process. Ifthe parties make that election, the court will explain the process and obtain their consent. The election of a formal or informal trial process does not diminish the court's authority to question witnesses or otherwise manage the proceedings in the interests of justice.
(d) Withdrawal. The court may allow a party to withdraw an informal trial election as long as the other party would not be prejudiced by the withdrawal. The court will not allow a withdrawal of an election that has the effect of postponing the trial date absent a showing of good cause. The court may at any time direct that a case proceed under the formal process, even if the trial or hearing has already commenced using informal procedures.
(e) **Trial Procedures.** An informal trial will proceed as follows:
(1) The court will ask each party or the party's attorney for a summary of the issues to be decided.
(2) Each party will be allowed to speak to the court under oath concerning all issues in dispute. Only the court may question the party to develop evidence required by law. The court will ask each party or the party's attorney whether the party wishes the court to ask follow up questions or inquire about other issues. Tho court will offer ouch party tho opportunity to respond to the factual information provided by the other party.
(3) Each party may offer any relevant documents or other evidence that the party wishes the court to consider. The court will determine whether to accept the items into evidence and what weight, if any, to give each item. Letters or other submissions by the parties' children that suggest custody or parenting preferences are discouraged. The court may require additional documents or testimony from other witnesses to supplement the record.
(4) Expert reports may be admitted into evidence without supporting testimony. Ifthe expert is called as a witness, the expert may be questioned by the parties, their attorneys, or the court.
(5) The court will offer each party or the party's attorney the opportunity to make a closing statement.

(SCO 1826 effective April 15, 2015)
Note to SCO 1826: At the end of three years, the Administrative Director will report to the Supreme Court on the efficacy of informal trials in domestic relations cases under Civil Rule 16.2 and make recommendations.

IDAHO

Idaho Rules of Family Law Procedure
Rule 713. Informal Trial

Idaho Rules of Family Law Procedure Rule 713. Informal Trial.
A. Informal trial model for custody and child support. An Informal Trial is an optional alternative trial procedure that is voluntarily agreed to by the parties, counsel and the court to try child custody and child support issues. The model requires that the application of the Idaho Rules of Evidence and the normal question and answer manner of trial be waived. Once the waiver is obtained the matter proceeds to trial by consent as follows:
1. The moving party is allowed to speak to the court under oath as to his or her desires as to child custody and child support determination. The party is not questioned by counsel, but may be questioned by the court to develop evidence required by the Idaho Child Support Guidelines and child custody evidence required by Idaho Code § 32-717.
2. The court then asks counsel for that party, if any, if there are any other areas the attorney wants the court to inquire about. If there are any, the court does so.
3. The process is then repeated for the other party.
4. If there is a Guardian ad Litem or other expert, the expert's report is entered into evidence as the court's exhibit. If either party desires, the expert is sworn and subjected to questioning by counsel, parties or the court.
5. The parties may present any documents they want the court to consider. The court shall determine what weight, if any, to give each document. The court may order the record to be supplemented.
6. The parties are then offered the opportunity to respond briefly to the comments of the other party.
7. Counsel or self-represented parties are offered the opportunity to make legal argument.
8. At the conclusion of the case, the court will make a decision.

B. Consent and waiver. The consent to and waiver to the Informal Trial shall be given verbally on the record under oath or in writing on a form adopted by the Supreme Court.

(Adopted April 2, 2014, effective for early adopters July 1, 2014, effective statewide July 1, 2015.)

OREGON

11th Judicial District
Deschutes County Circuit Court
Supplementary Local Rules
Rules 7.045 and 8.015

7.045 SETIING MOTION AND TRIAL DATE IN DISSOLUTION CASES
(4) The parties must declare, in writing on a form provided by the Court, whether they elect to proceed to trial under SLR 8.015 (Informal Domestic Relations Trial) or under the traditional manner of trial in domestic relations proceedings. Ifboth parties elect to proceed under SLR 8.015, the trial will be scheduled for an Informal Domestic Relations Trial.

The Court may refuse to allow the parties to utilize the Informal Domestic Relations Trial procedure at any time and may also direct that a case proceed in the traditional manner of trial even after an Informal Domestic Relations Trial has been commenced but before ajudgment has been signed. A party who has previously agreed to proceed with an Informal Domestic Relations Trial may file a motion to opt out of the Informal Domestic Relations Trial provided that this motion is filed not less than ten calendar days before trial. This time period may be modified or waived by the Court upon a showing of good cause. A change in the type of trial to be held may result in a change in the trial date.

8.015 INFORMAL DOMESTIC RELATIONS TRIAL
(1) Informal Domestic Relations Trials may be held to resolve all issues in original actions or modifications for dissolution of marriage, separate maintenance, annulment, child support, and child custody filed under ORS Chapter 107, ORS Chapter 108, ORS 109.103 and ORS 109.701 through 109.834.
(2) The Informal Domestic Relations Trial will be conducted as follows:
(a) At the beginning of an Informal Domestic Relations Trial the parties will be asked to affirm that they understand the rules and procedures of the Informal Domestic Relations Trial process, they are consenting to this process freely and voluntarily and that they have not been threatened or promised anything for agreeing to the Informal Domestic Relations Trial process.
(b) The Court may ask the parties or their lawyers for a brief summary of the issues to be decided.
(c) The moving party will be allowed to speak to the Court under oath concerning all issues in dispute. The party is not questioned by counsel, but may be questioned by the Court to develop evidence required by any statute or rule, for example, the applicable requirements of the Oregon Child Support Guidelines if child support is at issue.
(d) The Court will ask the moving party (or the moving party's attorney if the party is represented) whether there are any other areas the party wishes the Court to inquire about. The Court will inquire into these areas if requested.
(e) The process in subsections (c) and (d) is then repeated for the other party.
CD Expert reports will be entered into evidence as the Court's exhibit. Ifeither party requests, the expert will be sworn and subjected to questioning by counsel, the parties, or the Court.
(g) The parties may offer any documents they wish for the Court to consider. The Court will determine what weight, if any, to give each document. The Court may order the record to be supplemented. Letters or other submissions by the parties' children that are intended to suggest custody or parenting preferences are discouraged.

(h) The parties will then be offered the opportunity to respond briefly to the comments of the other party.
(i) The parties (or a party's attorney if the party is represented) will be offered the opportunity to make a brieflegal argument.
G) At the conclusion of the case, the Court shall render judgment. The Court may take the matter under advisement but best efforts will be made to issue prompt judgments.
(k) The Court retains jurisdiction to modify these procedures as justice and fundamental fairness requires.

2013 Commentary:
Additional information about the Informal Domestic Relations Trial process is available on the Court's website at htto: //courts.oregon.gov /Deschutes/.

UTAH

Judicial Council Rules of Judicial Administration
Rule 4-904. Informal trial of support. custodv and parent-time.

Rule 4-904. Informal trial of support, custody and parent-time.
Intent:
To allow the parties and judge to agree to a trial of select issues in an informal manner.
Applicability:
This rule applies to the district court.
Statement of the Rule:
(a) Upon waiver and stipulated motion of all parties and approval by the court, the court will conduct an informal trial of child support, child custody and parent-time issues. The waiver and motion shall be made verbally on the record or in a signed writing. To qualify for an informal trial, the court must find that the parties have made a valid waiver of their right to a regular trial.
(b) Ifthe court grants the motion, the informal trial shall proceed as follows:
(b)(l) The party who bears the burden of proof on an issue speaks to the court under oath about his or her desires about child support, child custody and parent-time. The party is not questioned by counsel or the other party but may be questioned by the court.
(b)(2) That party may present any document or other evidence. The court shall determine what weight to give any documents or other evidence. The court may order the record to be supplemented.
(b)(3) Counsel for that party may identify any other areas of inquiry, and the court may make the inquiry.
(b)(4) The process is repeated for the other parties.
(b)(S) Ifthere is an expert, the expert's report is entered into evidence as the court's exhibit. The expert may be questioned by counsel, parties or the court upon request.
(b)(6) Each party is offered:
(b)(6)(i) the opportunity to respond to the statements, documents or other evidence of the other parties; and
(b)(6)(ii) the opportunity to make legal arguments.
(b)(7) The court will enter an order which has the same force and effect as if entered after a traditional trial. If the order is a final order, it may be appealed on any grounds that do not rely upon the Utah Rules of Evidence.

Appendix O: Idaho Evaluation Report on Informal Trials

EVALUATION REPORT

Informal Custody Trial (ICT)

Evaluation 2010

The Informal Custody Trial (ICT) process was developed by the Idaho Children and Family in the Courts Committee (CFCC) in 2008 as a potentially less contentious alternative trial process to resolve custody disputes.

Prepared by: Planning and Research
Administrative Office of the Courts

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EXECUTIVE SUMMARY

On September 29, 2008, Idaho Rules of Civil Procedure 16(p) was adopted to include a Consent and Waiver for Informal Custody Trial (ICT). The goal of the ICT was to provide judges and litigants a potentially less contentious alternative trial process. The basic premise of the ICT was suspension of the rules of evidence, waiver of the rules of discovery, and waiver of the traditional question and answer manner of trial that allows litigants to directly present their case, issues, and concerns to the court. The ICT excludes cross-examination which can potentially increase conflict in an already highly emotional and often hostile environment.

This evaluation sought to provide deeper understanding of the potential advantages and disadvantages of the ICT through data collection from litigants and judges who utilized the ICT process between November 2008 and October 2010. Litigants were provided surveys by mail and judges were personally interviewed.

Findings from the data demonstrate that, overall, litigants appeared to lean towards agreement that the ICT model had been beneficial and that they believed the judge had listened to and respected them. Judges interviewed noted that the ICT model appeared to have some potential distinct advantages over the traditional trial process, primarily a savings of judicial time, the savings of money for litigants, the potential for reduced conflict, and the potential for litigants to feel heard through openly sharing their side of the story. However, the judges did not recommend the ICT for all cases and noted a few disadvantages including the potential for relying on improper evidence and the potential for judges feeling rushed to make decisions. Judges did not recommend the ICT for complicated cases requiring expert witnesses such as domestic violence, mental illness, etc.

INTRODUCTION

The Informal Custody Trial (ICT) model is based on a similar model from Australia called *The Children's Cases Pilot Project*. The Australia family court was looking for a less adversarial way to conduct family law litigation and this type of trial was suggested by former Australian Chief Justice Alastair Nicholson. He discovered and successfully utilized the technique "after his many years of experience grappling with the difficulties and inadequacies of an adversarial system dealing with children's best interests." [1]

Idaho District Judge Benjamin Simpson, a former Chair of the Children and Families in the Courts Committee (CFCC), recognized the need for a less adversarial process in family law cases in Idaho. After experimenting with various processes for some time, Judge Simpson became aware of the Australian model. Beginning in 2006, the CFCC and Judge Simpson developed the Informal Custody Trial model based on the Australian model and Judge Simpson's personal experience.

On September 29, 2008, Idaho Rules of Civil Procedure 16(p) was adopted to include a Consent and Waiver for Informal Custody Trial (ICT). The basic premise of the ICT is suspension of the formal rules of evidence, waiver of the rules of discovery, and waiver of the normal question and answer format of trial that allows litigants to directly present their case, issues, and concerns to the court. The ICT model excludes cross-examination, a procedure that can increase conflict in an already highly emotional and often hostile environment.

In the ICT model the judge still directs the proceeding, allowing the parties to speak, and the judge is allowed to ask parties additional questions designed to clarify and keep the testimony focused. Although the parties waive their rights to formal rules of evidence and other trial rights, including the right to direct and cross-examination, the judge still hears the evidence, makes a decision for the parties, and enters the orders based on his or her decision. This decision may consist of creating, modifying, or enforcing an order.

[1] Nicholson, A. (2005). *Association of Family and Conciliation Courts Conference* . Seattle, WA.

EVALUATION OVERVIEW

On September 29, 2008, Chief Justice Daniel T. Eismann issued an order directing that the frequency, use and experience of the parties that have used the ICT procedure shall be monitored and an annual report prepared for the Idaho Supreme Court.

Parent Survey

Based on this order, an evaluation was designed to monitor litigant's experience of the ICT process through surveys. Every 30 days, starting in March 2009 and ending in October 2010, surveys were sent to both parties of an ICT. If the parties were represented by counsel, a letter was sent to the party's counsel explaining the evaluation with a request for the attorney to forward the survey on to their client. The letter explained that parties may choose to complete the enclosed survey one of two ways: by paper with addressed envelope or online through a survey link. A copy of the survey is provided as Appendix A.

Survey completion was monitored and a second survey was sent to parties (or counsel) who had not completed the survey within 30 days. For parties who had counsel and had not completed a survey after two requests, the attorney was telephoned directly to inquire the status of the survey and request permission to forward the survey directly to their client.

Judge Interviews

In addition to parent surveys, the evaluation sought to gain further insight from judges regarding their interaction with and utilization of the ICT. Eighteen (18) interviews were conducted with judges from across the state. The interview questions are provided for reference in Appendix B.

LIMITATIONS

The primary limitation of this evaluation is the lack of comparison group which hinders the ability to draw conclusions on the usefulness of this model as compared to the traditional trial process. An additional limitation of this study is the lack of input from attorneys who provided representation in an ICT.

FINDINGS

A total of 99 cases in 11 Idaho counties participated in an ICT between November 25, 2008, and July 6, 2010. Kootenai County and Ada County had the highest number of ICT during the evaluation period with 54 cases and 20 cases respectively. The other nine counties each had seven or fewer ICT during the evaluation period. These 99 cases were heard by 22 different judges.

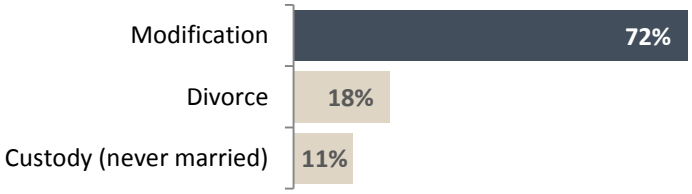
PARENT SURVEY

Surveys were sent to 179 parents. Surveys were mailed out to parents monthly starting in March of 2009 until October 2010 to parties on cases identified in ISTARS, the case management system for the Idaho courts.

Seventy-five (75) individuals completed the survey for a response rate of 42%. Four (4) surveys were completed by paper and returned by mail while the remaining 71 were submitted on-line by following the survey link. Survey respondents were almost equally representative of both genders: 39 male and 35 female.

Parents reported utilizing the ICT primarily to modify existing custody arrangements (72%) and for divorce proceedings (18%) (Figure 1).

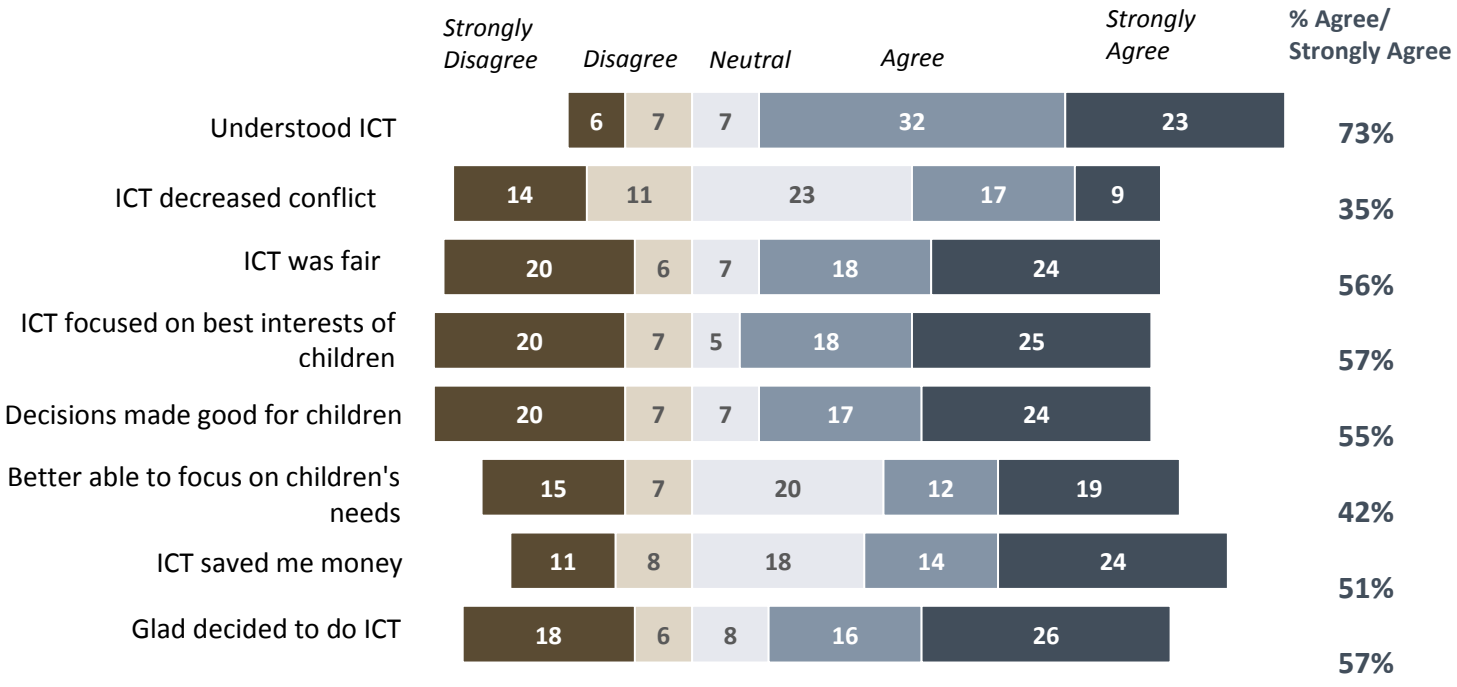
FIGURE 1: CIRCUMSTANCES THAT PROMPTED AN ICT



The survey presented parents with eleven statements and asked them to answer to what extent they agreed or disagreed with the statement. Response categories were: strongly disagree, disagree, neutral, agree, and strongly agree.

Statements attempted to encompass a range of areas that might indicate satisfaction with the ICT such as participant perceptions of whether or not the ICT model was fair, decreased conflict, focused on the best interests of children, saved money, etc. There was much variation in parent agreement to these statements as demonstrated below in Figure 2.

FIGURE 2: FREQUENCIES OF PARENT RESPONSES



An encouraging finding is that 73% of parents reported that they understood the ICT before agreeing to participate. The data also shows that parents overall more often than not agreed that the ICT was fair (56%), focused on the best interests of the children (57%), that decisions made were good for the children (55%), and were glad they had decided to do an ICT (57%). Of note, statements on whether or not the ICT focused on the best interests of their children or whether the decisions made were good for their children garnered the most "strongly disagree" responses (36% strongly disagreed/disagreed for both statements). Also of note, parents were the most evenly split on perceptions of whether or not the ICT model decreased conflict: 34% agree/strongly agree, 31% neutral, and 34% disagree/strongly disagree.

Parents were also presented with two questions about their perceptions of the judge presiding on their case. The majority of parents (74%) agreed or strongly agreed the judge treated them with respect, and 60% believed the judge listened to them.

In the middle of the data collection period, it was determined that the parent survey should be enhanced with an additional statement: "The outcome of the informal custody trial was in my favor." This statement was added in order to better understand the extent to which the outcome of the ICT influenced parent responses to other survey questions.

Thirty-two (32) of the 75 respondents completed a survey with this additional question.[2] A comparison was then done of those who believed the outcome was in their favor to those who did not believe the outcome was in their favor. Individuals who agreed or strongly agreed the outcome was in their favor also more often believed the ICT was fair, focused on the best interests of the children, and believed the decisions were good for their children (Figure 3).

FIGURE 3: % RESPONSES WHO AGREED WITH THE STATEMENT DEPENDING ON OUTCOME OF ICT

	Outcome NOT in Favor		Outcome in Favor	
Question	% Agreed or Strongly Agreed	N	% Agreed or Strongly Agreed	N
ICT was fair	0%	13	100%	14
ICT focused on best interests of my children	23%	13	100%	14
Decisions made during the ICT were good for my children	15%	13	100%	14
I am glad the other parent and I decided to use the ICT	23%	13	92%	13
I feel like the judge listened to me	23%	13	100%	13
I feel like the judge treated me with respect	42%	12	100%	13
I am better able to focus on the needs of my children as a result of the ICT	8%	13	77%	13
ICT decreased conflict	17%	12	50%	14

One positive finding (as seen in Figure 3) was that 42% of parents who believed the outcome of the ICT was not in their favor still agreed or strongly agreed that the judge treated them with respect.

Suggestions for Improvement

Parents were then asked if they had any suggestions for ways to improve the ICT. Forty-six (46) of the 75 parents provided a comment or suggestion. The two most common themes were general comments about judicial bias (9) (such as, "Judge seemed to favor the father," and "Judge – was a biased judge") and the desire for more education and preparation prior to the ICT (8). Five individuals expressed appreciation for the ICT process while four were angry or frustrated at the outcome. Other suggestions included the desire for more time to speak, the desire to comment on the other party's testimony, concern over the poor evidence and "lies

[2] This is a small number and making conclusions on this data is discouraged. The data presented is for informational purposes but cannot be considered conclusive. More study is warranted.

of the other party", the desire for more mediation, automatic drug testing, witnesses, time limit for ICT with no delays, and for both parties to be able to review all of the evidence prior to being submitted to the court.

Additional Comments

Parents completing the survey were then provided an opportunity to share "anything else" about their experience using the ICT. Parents took the opportunity primarily to comment on their perception of the ICT process, the judge, and the outcome. Approximately half of the comments were positive expressing appreciation for the judge, outcome, and process. Specifically, several parents noted that they believed the ICT to be a less stressful approach.

> *"I felt like my case changed significantly because presenting it pro se was from the heart and it benefitted my children's lives more positively because of it."*

> *"I was able to tell exactly what had transpired for me to request a change in custody. I was able to tell everything, which helped the judge make a good choice for the kids."*

> *"I think the judge listened more. It was a more relaxed setting instead of attacking each other."*

The other approximate half of the comments was frustrations regarding the judge and outcome of their ICT and dissatisfaction with the process.

> *"The concept of an informal custody trial is a great idea. But the judge was biased against women and did not listen to me."*

> *"I feel I was treated with utter disregard and disrespect…My children are now very distressed and are worse off."*

> *"For me this was an extremely bad experience."*

Other comments included the desire for more explanation of the process and more preparation. One additional comment was the desire for the attorney to have been able to speak more on the client's behalf:

> *"I had wished my attorney could have spoke more on my behalf. I was terrified of my ex-husband because of the threats and I could not speak as clear as I wanted to in fear of repercussions and fear for my life and my children's."*

JUDGE INTERVIEWS

Eighteen interviews were conducted with magistrate judges from 10 counties representing 6 of the 7 judicial districts in Idaho (Table 1). These judges had used the ICT process anywhere from one to fifteen times, with an exception noted for Judge Simpson who had used the process in approximately 60 cases. As Table 1 shows, more judges were interviewed from Kootenai County and Ada County which is appropriate considering these counties had markedly more ICT cases than the other eight counties.

TABLE 1

District	County	# Interviews
1	Kootenai	5
	Benewah	1
	Bonner	2
2	Clearwater	1
3	Canyon	1
	Payette	1
4	Ada	4
	Boise	1
5	Twin Falls	1
6	Bannock	1
	TOTAL	**18**

Judges were asked 16 questions regarding their interaction with and utilization of the ICT model in their courtroom. Questions ranged from asking about their process of utilization to perceptions of forms and perceptions of potential advantages and disadvantages of the ICT model.

Most judges reported that a typical ICT lasted anywhere from two hours to half a day, and 78% of judges (14) agreed that the process was more efficient than a traditional court trial. Additionally, a majority of judges interviewed believed the ICT was a more effective use of judicial time. A small percentage (less than 20%), were either unsure or had not done enough ICTs to accurately gauge whether or not it was a more effective use of judicial time.

While the ICT was considered potentially beneficial, it was not recommended for all cases. The majority of judges did not feel that it was a good option for cases involving domestic violence, or cases with a history of alleged child abuse or mental health or substance abuse issues. One judge specifically indicated that the ICT was probably not the best process for a case that had pending criminal charges. Also, the inability of an individual to provide adequate testimony as a result of limited cognitive capacity should be considered.

Regarding the Consent and Waiver form, none of the judges had concerns with the form or suggestions for ways to improve it.

The majority of judges reported that the ICT model was introduced and discussed at the litigant education class and was introduced again at the scheduling conference. Of the 18 judges interviewed, 11 indicated that they also introduced it at the pre-trial conference. However, some concerns were raised by two judges as to the

ICT until later in the case (right before trial), and should not be an option early on in the process.

Factors that indicated a particular case was especially well-suited to an ICT, as reported by judges, included self-represented litigants and simple-issue custody cases, including modification cases. Several judges commented that the process was not well-suited for cases that presented with domestic violence or mental health issues because it was difficult to get at the bottom of these issues without expert witnesses. Also, parties generally did not understand that all evidence was not given equal weight. Most judges commented that they felt that ICTs were especially well-suited to modifications or initial filings that involved only custody and visitation disputes. However, some judges felt that there were no factors that could "disqualify a case from an ICT". Additionally, a few judges indicated that they had used the ICT very successfully in high-conflict cases, including a case involving domestic violence.

To ensure the parties understood the ICT process prior to agreeing to participate, 17 of the 18 judges (94%) indicated they used the Waiver and Consent form that had been developed for the ICT process, in addition to a verbal review of the process with the parties. Another 44% of judges (8) indicated that when parties were represented by attorneys, they asked the attorneys to review the ICT process with their clients.

Influence of ICT on Conflict

Half of the judges believed the ICT process reduced conflict, 33% were unsure, and 17% believed that it did not reduce conflict. The judges primarily believed it reduced conflict because parties were not subject to cross-examination, were not able to question each other, and both parties were able to freely tell their side of the story without objection or argument. Other ways judges believed the ICT reduced conflict included:

1. **How the case was managed.** One judge attempted to make the experience positive by asking the parties to name positive aspects about the other party and attempted to help parties see their requests from the other party's perspective. Another judge believed that to the extent the parties felt they had been heard and that the judge had listened to them, it enhanced the likelihood of acceptance of the decision which potentially reduced conflict.
2. **Reducing courtroom time.** One judge believed the ICT reduced conflict by reducing the number of times parties were in courtrooms involved in high stress conversations.

For those who did not believe the ICT reduced conflict, reasons provided were that both parties are experiencing hurt in both the ICT and the traditional process regardless of how the case is tried and that the potential to increase conflict is actually raised by the ICT because of the difficulty of controlling the amount of venting, or "mudslinging," the parties did during the hearings.

All judges interviewed agreed that the model did have the potential to promote a sense of fairness, depending on the judge, and the majority of judges (over 95%) felt the model was an effective means of increasing access to the courts for self-represented parties. Some reasons judges gave for why they believed the model promoted fairness were:

- Parties potentially feel their voices are being heard
- Parties are allowed to say everything they want to say
- No cross-examination
- Enhanced questioning from the judge

Fairness, however, according to one judge, is about perception, and perception depends on how the judge handles the case. If the judge handles it well, there will likely be a perception of fairness. "Handling it well", according to this judge, included validating feelings while explaining what factors were relevant in the decision making as well as explaining the ruling.

Best Interests of Children

Judges appeared to be evenly mixed on whether or not they believed the ICT advanced the best interests of the children. Some judges expressed concern that the best interests of the children were not as easily advanced because of the risk that the judge is not getting all the information needed to make a quality decision: either the party could not articulate well, or the party did not understand the legal impact of something as well as an attorney might. Also, because there is no foundational basis for entering the information, the judge might be relying on stale or improper evidence. One judge was not sure the best interests of the children were being advanced because he believed that the parties did not always adequately offer relevant information.

An equal number of judges felt that the information provided in the informal setting did promote the best interests of the children because the judge could ask the questions he/she needed to in order to get at the necessary information. Judges also appreciated having the potential to see evidence they might not have been able to see in a traditional trial setting including report cards, letters written by children to parents, etc. In fact, one judge believed that over 90% of the information received during a recent specific case would not have been allowed in a traditional trial.

Another judge leaned slightly towards agreeing the ICT enhanced the advancement of the best interests of the children because it allowed individuals who had a difficult time presenting evidence to still get information to the judge that the regular rules of evidence might not have allowed.

Attorney Involvement

Several judges reported that attorneys, at the time of the interviews, were just beginning to figure out the ICT process in their part of the state. Judges saw the attorney role in ICT cases as primarily educating and preparing their clients and helping clients to organize how the case would be presented. Other roles included giving opening and closing statements and providing counsel throughout the ICT.

Perceived Benefits of ICT

The judges were asked what benefits the ICT presented over the traditional trial process, if any. Many judges provided multiple perceived benefits. The benefit most often noted by judges (25%) was the increased efficiency of trial time and judicial time. Judges also believed the ICT was beneficial to parties because it potentially saved money, increased satisfaction by allowing parties to openly share their side of the story, reduced conflict, reduced time to decision, and allowed judges to focus on gathering information directly related to the best interests of the child.

Perceived Disadvantages of ICT

Judges were also asked about the potential disadvantages of the ICT over the traditional trial process. Judges most often mentioned the potential of the ICT to increase conflict because of the nature of open testimony where parties could vent and bring up contested issues that are irrelevant to the case. Additionally, there was also the perceived potential problem of no cross-examination considering the ICT is not very effective at judging the credibility of witnesses. Quality of evidence was also a concern as was the danger of judges being "persuaded by information that judges would not ordinarily hear" and the "danger of placing too great a weight on untested evidence."

Judges, as stated earlier, were concerned that some cases were not appropriate for the ICT model, such as domestic violence, substance abuse, and mental health, where expert witnesses would be needed. However, some judges noted that there could be concern regarding the quality of judicial decisions in the absence of expert witnesses even for cases that did not involve these issues.[3] Quality of decisions was also of concern for judges who felt pressured to make quick decisions in the condensed trial time frame. One judge cautioned that the ICT process works for those judges who are willing to be patient and intentional with questioning and should

[3] The ICT does not prohibit the use of expert testimony. This appeared to be a misunderstanding among some of the judges interviewed. I.R.C.P. 16(p)(1)d. states: "If there is a Guardian ad Litem or other expert, the expertis [sic] report is entered into evidence as the court's exhibit. If either party desires, the expert is sworn and subjected to questioning by counsel, parties or the court."

not be used simply to save time. The ICT was also perceived to be potentially problematic for cases involving a marked power differential between the parties.

Suggestions for Improvement

Suggestions that judges provided for improving the ICT model included:

- Attorney training from the Idaho State Bar
- Enhanced judicial education
- Allow the ability to include expert testimony in proceeding
- Discussion of ways to filter the information coming in to the Court
- Set date for exhibits to be submitted by parties to allow judges adequate time to review exhibits and prepare for the decision
- Enhanced flexibility with the process
- Development of a "how-to" for self-represented litigants

Conclusion

Overall, parents more often than not agreed that the ICT model had been beneficial. Encouragingly, a majority of parents (76%) believed the judge had listened to them and 60% believed the judge had respected them.

Based on the interviews with judges across the state who had utilized the ICT in custody cases, there were several themes that emerged. First of all, in general, judges found the ICT to have some distinct advantages over the traditional trial process. Primary advantages of the ICT were the perceived decrease in judicial time needed to resolve cases, the savings of money for litigants, the potential for reduced conflict, and the potential for litigants to feel heard through openly sharing their side of the story.

However, there was also caution from the judges. ICT may not be for every family, just as it is not the process for every judge. Judges cautioned that the ICT would be ill fitted to complicated cases that would benefit from the traditional trial process and rules of evidence such as those that require expert witnesses. Additionally, some judges cautioned that the ICT presents risk in relying on incomplete or improper evidence therefore potentially influencing the quality of the decisions coming from the bench. The ICT should not be used simply for the sake of efficiency but rather should be considered on a case to case basis.

In conclusion, the ICT appears to be a potentially viable option for families and judges in Idaho who seek a less contentious alternative to the traditional trial process.

The following questions are intended to assess the benefits of informal custody trials to children and parents. Please indicate your level of agreement or disagreement with the following statements by checking the appropriate box.

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
1. I understood the informal custody trial fairly well before agreeing to participate.	☐	☐	☐	☐	☐
2. The informal custody trial decreased the level of conflict between myself and the other parent.	☐	☐	☐	☐	☐
3. The informal custody trial was fair.	☐	☐	☐	☐	☐
4. The informal custody trial focused on the best interests of my child(ren).	☐	☐	☐	☐	☐
5. Decisions made during the informal custody trial were good for my child(ren)	☐	☐	☐	☐	☐
6. I am better able to focus on the needs of my child(ren) as the result of going through the informal custody trial.	☐	☐	☐	☐	☐
7. The informal custody trial saved me money.	☐	☐	☐	☐	☐
8. I am glad that the other parent and I decided to use the informal custody trial.	☐	☐	☐	☐	☐
9. I feel like the Judge listened to me.	☐	☐	☐	☐	☐
10. I feel like the Judge treated me with respect.	☐	☐	☐	☐	☐
11. The outcome of the informal custody trial was in my favor.	☐	☐	☐	☐	☐

12. What best describes the circumstances which brought you into court?
    - ☐ The other parent and I were divorcing or separating
    - ☐ I wished to modify an existing custody arrangement
    - ☐ The other parent wished to modify an existing custody arrangement
    - ☐ I was moving to another town or state
    - ☐ The other parent was moving to another town or state
    - ☐ The other parent and I were never married and wished to obtain a custody order
    - ☐ Other: _____

13. What suggestions do you have for how informal custody trials might be improved?

_____

_____

14. Is there anything else you would like to share about your experience using the informal custody trial?

_____

_____

Thank you for participating in this survey!

Appendix B: Judge Interview Questions

1. About how many informal custody trials have you done?
2. At what point in a case do you usually introduce the ICT as an option (early in the case, before ADR options have been tried, after all ADR options have been exhausted)?
3. In your opinion, what factors might indicate that a particular case is especially well-suited to an ICT (parties are pro se, mediation has been unsuccessful, move-away cases, etc.)?
4. Are there any factors that you think might indicate that a case is not appropriate for an ICT (history of domestic violence, substance abuse, etc.)
5. What steps do you take to ensure that the parties understand the ICT process prior to agreeing to participate?
6. About how long does an ICT generally last? How does this compare to the length of traditional custody trials?
7. Do you believe that the ICT model helps to reduce conflict between parents involved in custody disputes?
8. In your opinion, does the ICT model help to promote fairness for parents involved in custody disputes? Is it an effective means of increasing access to the courts for self-represented parties?
9. Are the best interests of children more or less easily advanced using ICTs as compared to the traditional trial process?
10. In your opinion, does the ICT model help parents to focus on the best interests of their children? How does it compare with the traditional trial process in this regard?
11. Are ICTs a more or less effective use of judicial time as compared to the traditional trial process?
12. In cases where parties are represented, what role do attorneys play in ICTs?
13. What are your thoughts about the consent and waiver form? Is the information presented in a clear and understandable way? Does it provide sufficient information? Do you have any ideas about how it might be improved?
14. Can you think of any other benefits of ICTs?
15. Are there any disadvantages to using the ICT model?
16. How might the ICT model be improved?

Note: If the Judge has only done one ICT, be sure their responses provide insight into why this is this is so. If they do not, ask directly.

Appendix C: ICT Waiver and Consent Form

IN THE DISTRICT COURT OF COURTDISTRICT JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF COURTCOUNTY MAGISTRATE'S DIVISION

_____ PETITIONER,	)	Case No: _____
	)	**WAIVER OF THE RULES OF EVIDENCE FOR INFORMAL CUSTODY**
_____ RESPONDENT.	)	

I consent to proceed as follows:

Section A: My Rights

- I have been told I should discuss the Informal Custody Trial process with my lawyer. I have had the chance to discuss the Informal Custody Trial Process with a lawyer or I have decided not to discuss the process with a lawyer.
- I waive the normal question and answer manner of trial and I agree the court may ask me questions about the case.
- I agree to waive the rules of evidence in this Informal Custody Trial. Therefore:
    - The other party can submit any document or physical evidence he or she wishes into the record.
    - The other party can tell the court anything he or she feels is relevant.

Section B: Voluntary Acknowledgement

- I understand the following:
    - My participation in this Informal Custody Trial process is strictly voluntary, and that no one can force me to agree to this process.

- Documents, physical evidence, and testimony will be admitted during the Informal Custody Trial process, and the court will determine what weight will be given to the evidence.
- My rights on an appeal are extremely limited. I understand that, if I appeal, the court will be reviewing a transcript of the hearing and I will not be able to challenge any of the documents or testimony that was considered during the Informal Custody Trial Process. The only issue on appeal will be whether the court abused its discretion in reaching its findings and conclusions and it is unlikely an appeal will result in a different outcome.

- I have told my lawyer (if I have one), all the details of my situation or I have considered all the facts I believe the other person will testify to about me, whether true or not.
- I give this matter to the court freely and voluntarily to make a decision on the terms of child custody and child support.
- I am confident I understand the Informal Custody Trial process.
- I have not been threatened or promised anything for agreeing to this Informal Custody Trial process.

Dated this day of _____.

_____ _____

Signature Printed Name

IN THE DISTRICT COURT OF COURTDISTRICT JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF COURTCOUNTY MAGISTRATE'S DIVISION

_____ PETITIONER,	)	Case No: _____
	)	**ISTARS ROA CODE: CICT1**
_____ RESPONDENT.	)	**CONSENT TO INFORMAL CUSTODY TRIAL**

I consent to proceed as follows:

1. The person bringing the action before the court presents their case first, under oath. The person is not questioned by lawyers, but may be questioned by the court to develop evidence required by the Idaho Child Support Guidelines and child custody evidence required by Idaho Code 32-717.

2. The court asks the lawyer, if any or the moving party if there are any other items to be discussed.

3. The process is then repeated for the other person.

4. If there is a guardian ad litem or other expert, the expert's report is entered into evidence as the court's exhibit. If either party or the court desires, the expert may be questioned under oath.

5. The parties present any documents they want the court to consider.

6. Next, the parties may present testimony and documents to contradict or oppose the other party's testimony.

7. The lawyers involved or self-represented parties are given the opportunity to make legal argument.

8. The court will make a decision.

I consent to submit the following information to the Court:

- The names of my children and their ages.
- The current parenting arrangement, (i.e. when the children are with each parent).
- What I want for a custody schedule, (i.e. what days, holidays, etc. I want the children with me).
- The reasons I want this schedule.

- Why my proposed schedule protects the best interests of the children.
- How my schedule makes certain the other parent will also have a significant and meaningful opportunity to parent.
- My gross income.
- Whether I provide health insurance for the children, and if so, what it costs.
- The medical co-payments and deductibles for the children.
- The amount of support I pay for the support of other children I have with another person.

I have had the opportunity to ask the court about the Informal Custody Trial process. In order to minimize the negative effects of the parent's separation, I agree to have the court decide the child custody and child support issues in this case.

Dated this day of _____.

_____ _____

Signature Printed Name

Appendix D: Number of ICT Cases in Idaho 2011 & 2012

ICT Cases in Idaho 2011

District	County	Number
1	Bonner	2
	Kootenai	27
	Shoshone	1
3	Payette	1
4	Ada	10
5	Twin Falls	12
6	Bannock	3
	Total	**56**

ICT Cases in Idaho 2012

District	County	Number
1	Bonner	1
	Kootenai	36
4	Ada	7
5	Twin Falls	16
6	Bannock	4
	Total	**64**

Appendix P: Article on Oregon's Informal Domestic Relations Trial

OREGON'S INFORMAL DOMESTIC RELATIONS TRIAL: A NEW TOOL TO EFFICIENTLY AND FAIRLY MANAGE FAMILY COURT TRIALS

William J. Howe III and Jeffrey E. Hall

The Informal Domestic Relations Trial (IDRT) process adopted by the Deschutes County, Oregon, Circuit Court is described, evaluated, and compared to simplified family law procedural rules of other jurisdictions. The IDRT process has been created by local court rule, and will soon be adopted statewide in Oregon. The IDRT rule allows parties to choose a simplified trial or hearing format where the parties speak directly to the judge with no direct or cross-examination, nonparty witnesses are limited to experts, the traditional rules of evidence are waived, and all exhibits offered by the parties are admitted. IDRT cases are typically docketed more quickly than traditional trials; last just a couple of hours; and decisions are rendered promptly, usually the day of the hearing or trial. The court retains jurisdiction to modify the process as fairness requires and to divert cases where domestic violence or other reasons render IDRT inappropriate.

Key Points for the Family Court Community:

- Self-represented litigants are generally not capable of effectively presenting their family law case at trial because of the complexity of evidentiary rules and trial procedures.
- When conducting traditional trials involving self-represented family law litigants, judges are challenged by the requirement to remain passive, when more active engagement of the court is necessary in order to achieve fairness because few self-represented litigants understand the rules of evidence and trial procedure.
- A simplified trial and hearing process is necessary to accommodate these realities and the increasing number of self-represented family law litigants.
- The perception of procedural fairness of self-represented litigants is premised on their feeling that they were able to tell the judge their story.
- Five states and some jurisdictions outside the United States have adopted informal procedures for certain family law cases, and this trend is growing.
- Attorneys are increasingly recommending the IDRT process to clients where either only narrow issues are presented for trial or where their clients cannot afford full representation at trial.

Keywords: *Domestic Relations Trials; Family Law Trials; Informal Custody Trials; Informal Domestic Relations Trials; Pro Se Litigants; Procedural Fairness; and Self-Represented Litigants.*

INTRODUCTION

Creating a family is easy; reconstellating a family after divorce or separation is hard. No judge is required to approve a couple's cohabitation or procreation. However, in the United States only a court can grant a divorce, separation, or a judgment resolving child custody, parenting time, and support issues. So each year courts are crowded with litigants seeking resolution of their family law disputes.[1]

These customers of our courts are rejecting the traditional litigation model to resolve their issues. Premarital agreements, until fairly recently considered void as against public policy, are now common.[2] These agreements are designed to avoid most judicial involvement if the parties' marriage ends. Alternative dispute resolution models designed to minimize court involvement are widely available. The avalanche of self-represented litigants (SRLs)[3] seeking to navigate traditional court procedures is the most dramatic challenge to courts seeking to provide fair and efficient resolution of family law disputes.

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Various innovations have been developed to address the huge challenge presented by the self-represented phenomenon. These include encouraging lawyers to offer unbundled legal services and providing greater access to self-help resources, forms, and programs, such as the Center for Out-of-Court Divorce located in Denver, Colorado.[4] This innovation was birthed by the Institute for the Advancement of the American Legal System (IAALS).[5] IAALS convened a Summit of the national family law bar in November 2015 with the goal of generating specific and creative proposals for family justice system reform. The report, "The Family Law Bar: Stewards of the System, Leaders of Change,"[6] summarizes the outcome. These recommendations are predicated on the goal of making the family dispute resolution system more client focused and customer friendly.

This article describes a successful innovation piloted by Deschutes County, Oregon, Circuit Court, which is now being recommended for expansion statewide in Oregon—the Informal Domestic Relations Trial (IDRT). The IDRT rule allows parties to choose a simplified trial or hearing format. In Deschutes County, when a family case is at issue, the parties are offered a choice; they may proceed using the traditional trial or IDRT.

If the parties elect the IDRT procedure and a hearing becomes necessary, the judge actively controls the process. The parties speak under oath directly to the judge with no direct or cross-examination. The judge may ask questions, but lawyers and parties may not, unless the court permits. Nonparty witnesses are limited to experts. All traditional rules of evidence, including prohibitions on hearsay testimony, are waived. Any exhibits offered by the parties are admitted, and the court determines the evidentiary weight of such exhibits.

All matters of property division, support, and children's issues may be heard and decided. Typically, IDRT cases are docketed more quickly than traditional trials, last just a couple of hours, and decisions are rendered promptly, usually the day of the hearing or trial.

This article will explore the informal process in more detail and also compare IDRT to simplified proceeding rules of other jurisdictions.

IMPACT OF SRLs ON FAMILY COURTS

In some courts, eighty to ninety percent of family cases involve at least one SRL.[7] The figure is slightly less in Oregon, based on estimates of local judges. Unfortunately, as in most jurisdictions, the percentage of SRLs is impossible to accurately determine because of the record-keeping practices. However, almost everywhere, their numbers are very large and growing. Estimates in Oregon pegged the number of cases in which at least one party was unrepresented at some point in the proceeding at forty-two percent in 1995 and between seventy and eighty percent today.[8]

Most litigants self-represent because they cannot afford full-service representation. These individuals either did not qualify for free or reduced-cost services or unbundled legal services are unavailable in their jurisdiction or, if unbundled legal services were available, these litigants are often unaware of this option. Over ninety percent of SRLs in a recent study by IAALS indicated that financial issues were influential to their decision not to hire a lawyer.[9] This includes forty percent of the sample whose annual income was between $40,000 and $100,000.[10]

In the IAALS study, a significant subset of litigants chose to self-represent even though they could have afforded a lawyer, and they cited the following reasons for doing so:[11]

1. They felt the involvement of lawyers would make the dispute more adversarial and thereby corrode the ability of the parties to cooperate in the future.
2. They wished to have a larger voice in the process, to tell their story and retain more control of the process than they perceived would be possible if lawyers were involved.
3. They felt they could navigate without lawyers (perhaps part of our increasingly self-help-driven culture). Of those citing this reason seventy-eight percent possessed some college education.

This avalanche of SRLs has clogged the family court system in many jurisdictions whose rules and procedures are ill equipped to manage litigants unfamiliar with and unsophisticated in managing the requirements of the traditional trial model. In addition, judges are often conflicted about how far they may go to assist SRLs in presenting their case. If the judge offers no assistance, unfairness too often results. However, for the court to assist one or both parties, for instance by guiding the offer of critical evidence to the court, the judge might risk violating our model of judicial neutrality.

HISTORY AND DEVELOPMENT OF IDRT

Initially IDRT was conceived as a process to more efficiently manage the crushing family court docket and also as a way to relieve judges of the discomfort and concern over whether relaxing the rules of evidence or assisting in the preparation of judgments would violate judicial ethics rules.

It immediately became obvious that the benefits of IDRT were far greater than judicial economy and avoiding judicial ethics heartburn. This process was greeted by litigants as affording access to justice in a way that SRLs, even more than represented litigants, felt was more understandable. Furthermore, procedural fairness was advanced, as litigants felt and experienced being heard directly by the person who possessed the power to resolve the dispute.[12]

Deschutes County Circuit Court proposed a Supplemental Local Rule (SLR 8.015) establishing IDRTs in 2012.[13] The court did so in collaboration with Oregon's Statewide Family Law Advisory Committee (SFLAC).[14] Since 1997 the SFLAC has generated many of Oregon's family law reforms and innovations. SFLAC was assisted in the IDRT innovation by IAALS.[15] This rule was approved by Chief Justice Balmer and went into effect on May 29, 2013.

IDRT was inspired by the Idaho Informal Custody Trial (ICT) rule, which has operated since 2008.[16] However, unlike IDRT, the Idaho model is limited to determining custody and child support issues.

SFLAC and Deschutes County Court considered whether this process should be enacted by statute or court rule. As discussed below, to date, the few states that have created informal trial models have opted to pursue adoption by court rule or, in the case of Michigan, supreme court order. Establishing the IDRT process by court rule was determined to be the simplest and quickest process for Oregon and allowed for a more efficient pilot project.

Before IDRT was approved, extensive vetting was accomplished with stakeholders, including domestic violence advocates, local and statewide members of the bar, and the public.

IMPLEMENTATION AND OPERATION OF THE IDRT PROCESS

CASES AND HEARING TYPES APPROPRIATE FOR IDRT

Any contested family law proceeding where evidence and testimony is allowed qualifies for IDRT. The rule provides that IDRT "may be held to resolve all issues in original actions or modifications for dissolution of marriage, separate maintenance, annulment, child support and child custody."[17] All issues of discovery, child custody, parenting time, property division, and spousal support, from show cause proceedings to a trial on the merits, as well as modification proceedings, may be litigated using the IDRT process.

SELECTION OF IDRT

Upon filing, the parties are provided with a brochure summarizing the IDRT process and comparing the components of both the IDRT process and a traditional trial.[18] The IDRT rule requires a forced choice by the parties. It is an opt-in process because both parties must agree and sign the waiver form. To ensure that the option is given consideration in every case, parties are forced to

affirmatively select which type of trial they choose at the time their request for a trial or hearing is made. This generally occurs at a pretrial conference for SRLs. This election process is analogous to other civil and criminal proceedings where parties must elect whether they wish a bench or jury trial.

During early development discussions, some members of the SFLAC preferred an opt-out procedure to encourage the use of IDRT. This would have made IDRT the default choice, unless at least one party chose the traditional trial. Opt-out was rejected to ensure the court obtained explicit and voluntary consent of the parties; in addition, opt-out would have required legislation to establish a statewide rule much like the legislation authorizing small claims courts.

Since selecting an IDRT necessitates that parties waive certain statutory rights, a case can be set for an IDRT only if both parties sign the form waiving the traditional trial.[19]

IDRT OR HEARING PROCEDURE

Steps Taken to Ensure Parties Understand the IDRT Process

In all cases, and with special emphasis in cases involving SRLs, the court carefully informs litigants about the IDRT process by:

- Providing a copy of an informational brochure (or referral to the online version of the brochure) at multiple stages in the proceedings, including at the time of filing, at the pretrial conference and at the time of trial;
- Orally advising litigants about the process at various stages in the proceedings, including at a pretrial conference and at the time of trial;
- Periodically reviewing with litigants the IDRT, consent and waiver form;
- Consultation with retained counsel if the parties are represented and recommending that the parties seek legal advice if they do not have a lawyer.

At the commencement of an IDRT preceding, the judge carefully reviews the process with the parties and confirms their consent.

Hearing Procedure

SLR 8.015(2) provides that an IDRT will be conducted as follows:[20]

(a) At the beginning of an [IDRT] the parties will be asked to affirm that:
  (i) They understand the rules and procedures of the [IDRT] process; and,
  (ii) They are consenting to this process freely and voluntarily and that they have not been threatened or promised anything for agreeing to the [IDRT] process.

(b) The Court may ask the parties or their lawyers for a brief summary of the issues to be decided.

(c) The moving party will be allowed to speak to the Court under oath concerning all issues in dispute. The party is not questioned by counsel, but may be questioned by the Court to develop evidence required by any statute or rule, for example, the applicable requirements of the Oregon Child Support Guidelines if child support is at issue.

(d) The Court will ask the moving party (or the moving party's attorney if the party is represented) whether there are any other areas the party wishes the Court to inquire about. The Court will inquire into these areas if requested.

(e) The process in subsections (c) and (d) is then repeated for the other party.

(f) Expert reports will be entered into evidence as the Court's exhibit. If either party requests, the expert will be sworn and subjected to questioning by counsel, the parties, or the Court.

(g) The parties may offer any documents they wish for the Court to consider. The Court will determine what weight, if any, to give each document. The Court may order the record to be supplemented. Letters or other submissions by the parties' children that are intended to suggest custody or parenting preferences are discouraged.
(h) The parties will then be offered the opportunity to respond briefly to the comments of the other party.
(i) The parties (or a party's attorney if the party is represented) will be offered the opportunity to make a brief legal argument.
(j) At the conclusion of the case, the Court shall render judgment. The Court may take the matter under advisement but best efforts will be made to issue prompt judgments.
(k) The Court retains jurisdiction to modify these procedures as justice and fundamental fairness requires.

One critical feature of IDRTs is that the parties tell their own story, in their own words, presented as they wish. Within their allotted time to speak, parties may share with the court whatever they wish. The judge will guide them toward relevant material if they stray too far and ask sufficient questions to elicit essential information necessary to render a decision.

The Role of Attorneys in the IDRT Process

The IDRT process is available to represented and self-represented parties alike. In cases with represented parties, attorneys provide consultation and advice to retained clients regarding whether or not they should select an IDRT for trial. Also, attorneys advise potential clients in initial consultations prior to being retained about the availability of the IDRT process. At the hearing the attorneys are asked to summarize the issues and may advise their clients during the process, but they do not question or cross-examine witnesses.

Attorneys also do not participate in the offering of exhibits. Any document offered into evidence will be received, subject to the right of the court to reject those that have absolutely no relevance or are otherwise inappropriate.

The role of attorneys, as well as every other step of the process, can be modified by the judge at any stage of the proceeding.

One advantage of the IDRT option is that it provides an excellent vehicle for lawyers to offer unbundled or limited-scope legal services. Several parties have consulted lawyers and then proceeded to handle the IDRT without counsel in the courtroom.

LENGTH OF IDRTs

Generally speaking, IDRTs are scheduled for two hours of in-court trial time. In addition, judges dedicate thirty minutes of pretrial time for case file review and up to sixty minutes of posttrial time to reach their decision and, in self-represented cases, complete, sign, and present the final judgment to the parties.

While a number of cases in which parties are represented are also concluded within two hours, cases in which both parties are represented generally take somewhat longer to complete.

IDRT APPEAL RIGHTS

Use of the IDRT process does not limit either party's right to appeal. However, it narrows the issues upon which an appeal may be taken, assuming the waiver itself is held to be valid and binding (the party signing is competent and there is no duress or fraud). We are not aware of any appeals challenging the validity of any waiver or IDRT proceeding.

Table 1
Number of Traditional and Informal Trials, June 2013 to December 2015

Case Type	*Formal*	*IDRT*	*Total*	*Pct.*
Dissolution	79	27	**106**	25%
Other	4	0	**4**	0%
Petition Custody	53	12	**65**	18%
Separation	10	1	**11**	9%
Total	146	40	186	22%

STATEWIDE APPLICATION OF IDRT

After reviewing the IDRT evaluation discussed below, the SFLAC determined IDRT is a success in Deschutes County and has recommended to Chief Justice Balmer its statewide application in the form of a new Oregon Uniform Trial Court Rule in the fall of 2016. The chief justice has indicated his support and proposed rule changes for statewide application is in process.

EVALUATION OF IDRTs IN DESCHUTES COUNTY, OREGON

Forty IDRTs were held in Deschutes County Circuit Court from June 2013 through December 2015.[21] These represented twenty-two percent of all domestic relations trials held during this period.

A formal evaluation was designed for the IDRT pilot with the assistance of IAALS. The evaluation consisted of a litigant satisfaction survey for both traditional and IDRT cases, matched to case outcome data and a post-implementation questionnaire reflecting the experience of judges with IDRT. The litigant satisfaction survey failed to generate a sufficient number of responses from IDRT litigants and was therefore abandoned. However, the post-implementation questionnaire was expanded to include a group of attorneys. The judicial officer questionnaire responses were obtained during individual conversations with three judges. The attorney responses were obtained during a single conversation with three attorneys who had experience with IDRTs. All questionnaire responses were obtained in March and April of 2016. The results of these questionnaire-based conversations have generated the conclusions presented below.

IDRT was evaluated, based on the responses of three Deschutes County judges and three practicing attorneys who represented clients in IDRT proceedings. This evaluation followed an outline established in the Evaluation Design Judge Questionnaire. A statistically valid evaluation, based on users to date, could not be accomplished due to the inadequate number of survey responses returned.

NUMBER OF IDRTs

The judges interviewed for this evaluation had all conducted between five and ten IDRTs. The attorneys interviewed for this evaluation had all participated in one to three IDRTs and had counseled up to three clients who subsequently participated in an IDRT without representation present at the proceeding. Table 1 summarize general information about IDRT for the thirty-one months of program data from June 2013 through December 2015.

IDRTs were used most frequently in dissolution cases with twenty-five percent of trials in dissolution cases heard as an IDRT.

Table 2 shows the number of IDRTs over time. As expected, the rate of IDRTs in the first six months was lower than in the subsequent two years. This occurred because many of the trials held during the first six months of implementation were scheduled prior to the effective date of the IDRT rule.

Table 2
Number of Traditional and Informal Trials by Year

Year	*Formal*	*IDRT*	*Total*	*Pct.*
2013	39	6	**45**	13%
2014	54	16	**70**	23%
2015	53	18	**71**	25%
Total	146	40	186	22%

Table 3 shows the number of SRLs that opted for IDRTs during the sample period. In cases where both parties were self-represented, the vast majority of litigants have opted for the IDRT process over a traditional trial.

CONTENT OF THE CONSENT AND WAIVER FORM

No issues or concerns had been raised regarding the content of the written waiver. Further, all judges indicated that they engaged both parties in a colloquy, on the record and prior to the hearing or trial, to confirm the parties were aware of the content and implications of the waiver and implications of the choice of IDRT over a traditional trial.

FACTORS IN CASES THAT AFFECT SUITABILITY FOR AN IDRT

The broadest category of cases that are appropriate for the IDRT process are those where neither party is represented, where the marital assets are reasonably straightforward, and where no nonexpert witness testimony was critical to achieving a just result. Most cases involving two SRLs followed this pattern. IDRT was appropriate in these cases because most SRLs did not have sufficient familiarity with the law to effectively present their case, use witness testimony, operate within the confines of the rules of evidence, and focus on the statutory factors a judge must consider in deciding the issues presented.

Cases involving domestic violence where both parties are self-represented are viewed as particularly well suited for the IDRT process. The IDRT rules allow the victim to introduce medical and law enforcement reports without having to call a witness to establish foundation. Additionally, the IDRT process allows the victim to avoid cross-examination by the perpetrator, and the judge is able to maintain a level of control in directing the lines of inquiry and focus of the trial, thus mitigating the inappropriate exercise of power and control by a perpetrator during the conduct of the trial.

Of the forty IDRTs conducted between June 2013 and December 2015, one or both parties were represented in as many as nine cases.[22] The IDRT process proved appropriate in cases where one or both litigants were represented, when the parties could not afford counsel for a traditional trial, where the trial was focused on a narrow issue, or where legal strategy suggested the IDRT process would allow evidence to be introduced that might otherwise be excluded in a formal trial process.

Table 3
Number of Traditional and Informal Trials by Representation

# Attorneys	*Formal*		*IDRT*		*Total*	
0	13	9%	**31**	78%	44	24%
1	41	28%	**3**	8%	44	24%
2	92	63%	**6**	15%	98	53%
Total	146		40		186	

Case Spotlight

When initially implemented, some worried that the IDRT process would not be appropriate in cases involving high-value marital assets. These concerns were refuted by a self-represented divorcing couple who had worked together to resolve all issues, except the division of several parcels of real estate valued in excess of one million dollars. The parties had carefully researched the law, but arrived at different conclusions on how to correctly value the real estate. They simply wanted a judge to tell them who was correct and successfully used the IDRT process to bring that one issue before a judge.

There were no cases in which the IDRT process was initiated, but during the trial or hearing the judge found this process to be unfair or inappropriate.

The judges and attorneys participating in the evaluation agreed that the traditional trial process was more appropriate for cases in which both parties were represented, where there were significant and complex marital assets, where nonexpert testimony was critical in achieving a just result, or where there were complexities surrounding the issues of child custody and support.

IDRT REDUCED THE LEVEL OF CONFLICT BETWEEN THE PARTIES

The judges and attorneys participating in the evaluation were in general agreement that the IDRT process reduced conflict at trial for the following reasons:

- Friends and family members are not called to testify and publicly choose sides at trial.
- Parties are not able to elicit testimony from friends and family that is spiteful or intended to cause emotional harm to the other party.
- The parties do not cross-examine each other, eliminating their ability to ask questions intended to cause emotional distress or harm to the other party.
- While allowing both parties to completely tell their side of the story, the judges felt they were able to both set an example and direct that testimony be provided in a respectful manner. Further, with the judge asking questions, testimony stays relevant.
- The simpler process means that the rules do not interfere with the parties providing information to the judge, reducing frustration and friction among the parties.

LITIGANTS' SENSE OF FAIRNESS IN CUSTODY DISPUTES

The perception of the judges and attorneys evaluating IDRTs was that the litigants' sense of fairness was directly tied to their belief or feeling that they were heard. There was a broad consensus that the IDRT process significantly enhanced the parties' sense that the process was fair, and this was true even when the outcome was not exactly what had been advocated. The IDRT process almost guaranteed this result because parties do not present their case through witness testimony, but rather through a direct conversation with the judge.

The judges noted that when conducting a traditional trial they can ascertain the parties' legal positions but not always the underlying emotional dynamic. Using the IDRT process, the judge learns much more about how the parties feel, which allows the judge to recognize and acknowledge these feelings while still rendering a decision based on the facts and law. The outcome would very likely be the same as in a traditional trial, but the parties seem more inclined to accept the ruling after the IDRT process.

Case Spotlight

Following an IDRT on a custody modification, a couple relayed to the judge that the original dissolution trial was brutal. Both sides called friends and family to testify and say hurtful things. The emotional damage took several years to overcome. Both litigants shared that the IDRT process was much less painful, and avoiding a repeat of the painful aspects of their first trial would allow them to continue co-parenting in a positive, supportive manner.

The attorneys noted that a represented party's sense of fairness is often diminished when they feel their attorney does not ask questions or delve into subjects that are not legally relevant but are emotionally important to the client. Further, when objections lead to the exclusion of information a party considers important, that party might perceive the process to be unfair feeling that the judge did not have the opportunity to hear all of the facts. The attorneys felt that they improved their client's sense of fairness (in all trials) when they explain why certain things happened post-trial.

ACCESS TO JUSTICE

To the extent that access to justice is defined by timeliness, it is improved by the availability of IDRTs. The reason is practical: shorter trials are easier to schedule into the court's trial calendar and are more likely to be heard when scheduled. The data collected reflected that IDRT hearings were shorter than traditional hearings, no IDRT hearing took longer than half a day and most were much shorter.

BEST INTERESTS OF THE CHILD

In an IDRT the testimony of the parties in cases with SRLs is more focused on the statutory factors a judge is required to consider in determining child custody or parenting time because the judge is generally directing the lines of inquiry. This contrasts with traditional trials involving SRLs where judges have felt more constrained in their ability to direct the questioning of witnesses and parties.

The judges interviewed observed that because the judge-initiated questioning was more focused, the parties tended to follow the example set by the judge and focus their comments on issues relevant to their children's best interests and the other matters at issue. This resulted in both a reduction in arrow slinging by the parties and more targeted testimony on the issues the judge is required by statute to consider in making decisions. However, judges conducting an IDRT still allow the parties to talk themselves out, which occasionally led to excursions into irrelevancy but with the benefit of the parties having felt heard.

EFFECTIVE USE OF JUDICIAL TIME

In cases involving two SRLs, judicial efficiency is achieved with the IDRT process. IDRTs avoid the tedium of presenting numerous nonexpert witnesses to testify. There has also been a marginal reduction in the amount of time the parties testify because the direct questioning by the judge keeps the focus on the legal issues to be resolved.

PROCEDURAL JUSTICE

For cases involving two SRLs, the IDRT process was viewed as providing better procedural justice. Procedural justice can only be served if the participants understand and can effectively use the procedures in the manner and for the purpose they are intended. Most SRLs cannot effectively

employ the rules of evidence nor effectively present their case through the question–answer exchange with witnesses.

FURTHER BENEFITS AND DISADVANTAGES OF THE IDRT

Because the IDRT is established by a court rule, judges no longer worry about violating the cannons of judicial ethics when employing these informal procedures. In the conduct of a trial involving one or two SRLs, a judge is no longer restrained or conflicted when proceeding informally and stretching the boundaries of evidentiary rules, when the application of these rules would prevent the admission of evidence the court needs to consider to make a decision.

The attorneys who participated in the evaluation indicated some potential clients, and some retained clients reported that, absent the availability of the IDRT process, they would likely have forgone a hearing and felt disserved by the court process.

Finally, an important goal of the IDRT was for parties to receive a decision immediately following the trial. In furtherance of this goal, several judges have adopted the practice of completing, signing, and filing the judgment at the conclusion of the trial. This provides legal finality to the parties and ensures the judgment is actually entered. Further, it eliminates the back-and-forth correspondence that frequently occurs when the judge relies on SRLs to draft the form of judgment, thereby reducing the workload of judges and staff.

SUGGESTIONS FOR IMPROVEMENT

The Deschutes County Court is in the process of developing a trial preparation outline for SRLs. There are excellent materials available, including those from the National Judicial Institute in Canada.[23] When developed, the trial preparation outline would be of particular benefit to SRLs selecting either trial process, but these materials would be available to all litigants and lawyers.

The attorney group felt that allowing the judge to review and consider any available mediator's report could help to narrow the issues for trial. Mediation proceedings in Oregon are confidential.[24] As such, mediation reports are inadmissible unless both parties consent to their admissibility. Therefore, either the IDRT waiver would need to include the stipulation that mediator reports are admissible, or the mediation confidentiality statute would have to be amended.

PROGRAMS SIMILAR TO THE IDRT IN OTHER JURISDICTIONS

Australia was the first jurisdiction to introduce an informal procedure sharing many of the essential elements of the IDRT—the Children's Cases Pilot Project began in 2004. Idaho was the first to initiate a similar procedure in the United States in 2008. Utah, Alaska, and Michigan have initiated models similar to IDRT and Iowa may be soon to follow. All jurisdictions other than Oregon's and Alaska's, which was modeled on Oregon's, limit the informal proceedings to the litigation of children's issues. Some limit the program availability to only SRLs. These are summarized below.

IDAHO

The Idaho ICT was the direct inspiration for Oregon's IDRT. ICT Rule 713 was developed in 2008 and applies statewide. It was limited to the determination of child custody and child support issues.[25] Like IDRTs, the goal was to provide judges and litigants a less contentious alternative trial process. The basic premise of the ICT was suspension of the rules of evidence; waiver of the rules of discovery; and waiver of the traditional question-and-answer manner of trial that allows litigants to directly present their case, issues, and concerns to the court. The ICT excludes cross-examination, which it felt risks increasing conflict in an already highly emotional and often hostile environment.

The ICT rule was evaluated in 2010 and determined to be very positive for most litigants using this process for the same reasons the IDRT has been praised. Like IDRTs, some judges felt the Idaho model would not be appropriate when complex issues involving expert and nonexpert testimony needed to be litigated.

In July 2015, Idaho further modified family law hearing practice; though this later rule change did not affect the ICT.

In the Idaho Rules of Family Law Procedure 102 created a simpler evidentiary standard that applies in all family law cases, unless a party timely selects the strict application of the rules of evidence.[26] The evidentiary standard in Rule 102 provides that all relevant evidence is admitted, unless excluded for certain enumerated reasons. It is meant to replace only the evidentiary rules that apply to hearsay, character, and authentication but does not replace all of the evidentiary rules. In addition, relevant documents are admitted without further authentication and foundation if they appear on their face to be authentic. Rule 102 is not as extensive as the waiver of all of the rules of evidence that parties consent to when choosing the ICT. This portion of the Idaho evidence code was modeled on similar provisions contained in Rule 2 of the Arizona Rules of Family Law Procedure.[27]

AUSTRALIA[28]

Idaho's ICT model is based on a process used in Australia called The Children's Cases Program. This began as a pilot program in the Sydney and Parramatta (suburb of Sydney) registries in March 2004 and became a national program in 2006. An exhaustive description and evaluation of the pilot program was commissioned by the Family Court of Australia and published in June 2006.[29]

The court was seeking a less adversarial, more child-focused process to conduct family law litigation. This type of trial was suggested by former Australian Chief Justice Alastair Nicholson.[30]

The Children's Cases Program is limited to matters involving children. It requires the judge to play a more active, inquisitorial role, such as engaging the parties in discussion about what needs to be done and highlighting areas of agreement between the parties, as well as isolating issues that need to be resolved. The process is designed to be more cooperative. However, the rules of evidence are not automatically waived, and witness examination and cross-examination is allowed, though it is less aggressive than in a traditional trial. The judge is given wide discretion to apply or waive rules of evidence or procedures, as the case and justice requires.

ALASKA

In 2014, the Alaska Judicial Education Department invited co-author Jeff Hall and Judge Wells Ashby of Deschutes County to share the Deschutes County experience with IDRTs. Shortly thereafter, the Alaska Supreme Court promulgated a statewide rule, Alaska Rule of Civil Procedure 16.2, which is substantively identical to the IDRT.[31] Thus far, the anecdotal evidence suggests that the program is a success.

UTAH

Utah's Code of Judicial Administration Rule 4-904, "Informal Trial of Support, Custody and Parent-Time," as the title suggests, is limited to the determination of child support, child custody, and parent-time issues.[32] Rule 4-904 was enacted in 2014 and applies statewide. Other than being limited to children's issues, this process resembles the IDRT. The parties are not questioned, except by the court. They are permitted to tell their story without being cross-examined. The rules of evidence are waived. The final order has the force of a traditional trial, except that appeal may not be premised on a violation of the Utah Rules of Evidence.

MICHIGAN

Michigan's pilot project created by Supreme Court Order in 2010 and available in the Twenty-Ninth Judicial Circuit Court was a voluntary, opt-in process that authorized a "conference-style hearing."[33] The Michigan model was a hybrid between a IDRT and a traditional trial. Both narrative testimony and witness questioning is allowed. "Informal evidentiary rules and procedures" are followed rather than waiving the traditional rules of evidence. Michigan's pilot project is referenced as an example of an informal procedure that is not as radical a departure from the traditional trial model as IDRT. This pilot project was abandoned in 2013, suggesting a hybrid traditional/informal trial procedure may not be workable.

IOWA AND OTHER JURISDICTIONS

On July 12, 2016, the Iowa Supreme Court Family Law Case Processing Reform Task Force presented its report to a special session of the Iowa Supreme Court. This Task Force urged the adoption of the Deschutes County IDRT rules for Iowa. The Court was receptive and the matter is under active consideration.

It is likely that Iowa and other jurisdictions will enact an IDRT-like informal process in the near future. Indeed, there may be similar programs already available elsewhere in addition to those discussed above. Clearly, the IDRT process addresses the needs of both the court and litigants for many cases.

IAALS RECOMMENDATIONS

In May 2016 IAALS completed its extensive "Cases Without Counsel" research project. Among its recommendations the IAALS report supports the IDRT process, suggesting that it is a more efficient and fair process to manage cases involving SRLs.[34]

CONCLUSION

Deschutes County's IDRT process is an innovative option for courts seeking to better serve the public and provide greater access to justice and procedural fairness in any family law matter. While no panacea, this important innovation provides a less adversarial and more user-friendly family law dispute resolution regime for many disputes. It is particularly attractive to SRLs who struggle to navigate the complexities of the traditional trial model. Families reconstellating and requiring the assistance of the court need and deserve accessible, fair, and customer-friendly innovations like IDRT.

NOTES

1. R. LaFountain, William J. Howe III and Jeffrey E. Hall, *Examining The Work of State Courts: An Overview of 2013 State Court Caseloads*, Nat'l Ctr. for St. Cts. (2015), *available at* http://www.courtstatistics.org/~/media/Microsites/Files/CSP/EWSC_CSP_2015.ashx.

2. The Uniform Premarital Agreement Act has been adopted by twenty-seven states, proposed in four more and premarital agreements are valid in almost every state, including those that have not adopted this uniform law. Wikipedia, https://en.wikipedia.org/wiki/Uniform_Premarital_Agreement_Act (last visited September 13, 2016).

3. "Self-represented" is used to describe litigants without lawyers, rather than the Latin "pro se."

4. The Center for Out-of-Court Divorce–Denver: Positive Solutions for Families in Transition offers Denver-area families a proven family centered approach, working in partnership with the local courts. Through the Center, families with children can take advantage of financial and legal education, mediation, and individual family counseling. The Center also provides postdecree support services. The Center For Out-Of-Court Divorce, http://centerforoutofcourtdivorce.org/(last visited September 13, 2016).

5. IAALS is a national, independent research center at the University of Denver dedicated to facilitating continuous improvement and advancing excellence in the American legal system. IAALS has four initiative areas, one of which is the

Honoring Families Initiative (HFI). HFI identifies and recommends dignified and fair processes for the resolution of divorce, separation, and custody in a manner that is more accessible and more responsive to children, parents and families. Learn more about IAALS and HFI at http://iaals.du.edu.

Natalie Knowlton, IAALS, The Family Law Bar: Stewards of the System, Leaders of Change (2016), *available at* http://iaals.du.edu/sites/default/files/documents/publications/the_family_law_bar_stewards_of_the_system_leaders_of_change.pdf.

6. *Id*.

7. Jud. Council of Cal., Task Force on Self-Represented Litigants, Implementation Task Force: Final Report 2–3 (Oct. 2014) (discussing the rise of self-representation in various states over the past thirty years) available as Attachment A at: http://www.courts.ca.gov/partners/documents/EA-SRLTaskForce_FinalReport.pdf (last visited September 13, 2016).

8. This estimate is based on conversations with the chief family court judge in Multnomah County, Oregon's largest jurisdiction. Determining the exact percentage of self-represented litigants is impossible because of the way records of cases are kept. Furthermore, frequently litigants have an attorney of record for only part of their case. Few judicial case management systems track at what different stages a litigant self-represents.

9. Natalie Anne Knowlton et al., IAALS, Cases Without Counsel: Research on Experiences of Self-Representation in U.S. Family Court (2016), http://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf.

10. *Id*. at 13.

11. *Id*. at 16–22.

12. Studies in Australia and elsewhere evidence that litigants feelings of being treated fairly by family courts are driven far more by procedural fairness and the sense of "being heard" than by the outcome. William Howe and Chief Justice Diana Bryant, Conversation at AFCC Annual Conference, Seattle, Washington, (June 2, 2016).

13. Judicial Department State of Oregon, Local Supplementary Rules 7 (2015), *available at* https://www.ojd.state.or.us/Web/ojdpublications.nsf/Files/Deschutes_SLR_2015.pdf/$File/Deschutes_SLR_2015.pdf.

14. SFLAC, created by statute and its members appointed by the chief justice is charged with ". . . identifying family law issues that need to be addressed in the future. The Statewide Family Law Advisory Committee enabling statute is ORS 3.436. See http://courts.oregon.gov/OJD/docs/osca/cpsd/courtimprovement/familylaw/ors3436.pdf/ (last visited September 13, 2016).

15. IAALS, through HFI, has made significant contributions to forwarding family law reform efforts in the United States. Its most recent report, *The Family Law Bar: Stewards of the System, Leaders of Change,* is outstanding. *See* IAALS, http://iaals.du.edu (last visited September 13, 2016). *See also* Knowlton, *supra* note 5.

16. State of Idaho Judicial Branch, https://www.isc.idaho.gov/ircp16p (last visited September 13, 2016).

17. Judicial Department State of Oregon, *supra* note 13, at Rule 8.015(1).

18. Oregon Judicial Department, *Domestic Relations Trials in the Deschutes County Circuit Court*, http://courts.oregon.gov/Deschutes/docs/form/dissolution/IDRT_Brochure.pdf (last visited September 13, 2016).

19. Domestic Relations Trial Process Selection and Waiver for Informal Domestic Relations Trial, http://courts.oregon.gov/Deschutes/docs/form/dissolution/Trial_Selection_and_Waiver_Form.pdf (last visited September 13, 2016).

20. Judicial Department State of Oregon, *supra* note 13, at Rule 8.015(2).

21. Based on a summary review of the Odyssey case registry for cases with the hearing event "trial court" between June 1, 2013, and December 31, 2015. It is likely that the number of IDRTs is slightly undercounted.

22. Based on a summary review of the case registry and the case participant listing. The date range of attorney representation relative to the trial date was not verified in all instances.

23. National Judicial Institute, https://www.nji-inm.ca/(last visited September 13, 2016).

24. ORS 36.220.

25. Sup. Ct, IRFLP 713, https://www.isc.idaho.gov/irflp713 (last visited September 13, 2016).

26. Sup. Ct, IRFLP 102, (July 1, 2015), http://www.isc.idaho.gov/irflp102 (last visited September 13, 2016).

27. Ariz. Rules Fam. L. Proc., http://law2.arizona.edu/clinics/child_and_family_law_clinic/Materials/Rules%20of%20Family%20Law%20Procedure.pdf (last visited September 13, 2016).

28. The Family Court of Australia has long been the gold standard in family court reform. The Children's Cases Program is but one example. This vertically integrated family court has published periodic surveys of user satisfaction. Fam. Ct. Australia, *Court User Satisfaction Survey 2015*, *available at* http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/reports/2015/ (last visited September 13, 2016).

29. Rosemary Hunter, *The Family Court of Australia's Children's Cases Pilot Program* iv–vi (July 25, 2007), http://citation.allacademic.com/meta/p_mla_apa_research_citation/1/7/5/3/5/p175354_index.html.

30. Fam. Ct. Australia, The *Less Adversarial Trial Handbook* iv–vi (June 02, 2009), http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/reports/2009/LAT (former Chief Justices Nicholson's inducements).

31. *See* Ala. Rules of Ct., *Rules of Civil Procedure* (2015–2016), *available at* http://www.courtrecords.alaska.gov/webdocs/rules/docs/civ.pdf; *See also* Ala. Ct. Sys. Self-Help Ctr.: Fam. L., *Domestic Relations Trials- Understanding the Two* Options (May 13, 2015), *available at* http://courts.alaska.gov/shc/family/shcdr-trials.htm.

32. Utah Cts., *Informal Trial of Support, Custody and Parent-Time* (Jan. 29, 2015), *available at* https://www.utcourts.gov/howto/family/informal_trial/.

33. Inst. of Continuing Legal Educ., *ADM File No. 2006-25: Administrative Order No. 2008-1* (Apr. 8, 2008), *available at* https://www.icle.org/contentfiles/milawnews/Rules/Ao/2006-25_04-08-08_unformatted-order.pdf.

34. Knowlton et al., *supra* note 9, at 14.

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