



Updates From the Domestic Relations Bench in Colorado

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More than 20 years ago, the Colorado Judicial Department established the Standing Committee on Family Issues to oversee the unique challenges that arise in domestic relations (DR) matters in our courts. DR cases are among the most important matters brought before Colorado judges, both in terms of their impact on families and in terms of the legal and emotional complexity of the cases themselves. For most people, their family law case, whether it be a divorce, a decision about parenting time, or resolution of child support, will be their exclusive interaction with the justice system. A judge hearing a family law case must understand not only Title 14 of the Colorado Revised Statutes (the title addressing

domestic matters), but also financial issues such as income, taxes, property (valuation, sale, financing, etc.), business interests, retirement, investments, trusts, contracts, bankruptcy, and the like.

DR judges regularly see families in crisis dealing with domestic violence, criminal issues, dependency and neglect cases, substance abuse concerns, and mental health diagnoses. Judges handling family law matters are expected to understand the developmental needs of children from newborns through age 18 and to make decisions that are in the best interests of those children. The reorganization of a family is rarely, if ever, without conflict. Each judge presiding over a family matter must confront this range of challenges. And the justice system

as a whole must be constantly attentive to best practices and innovation in the field.

It was with these realities in mind that then-Chief Justice Mary Mullarkey established the Standing Committee on Family Issues in 2002. Committee membership today includes district and appellate court judges, both family law attorneys who represent high-end clients and those who work with low-income or moderate-means clients, family court facilitators,¹ self-represented litigant coordinators,² the Judicial Department's child support coordinator and head of the Office of Dispute Resolution, mediators and mental health professionals, and faculty from Colorado's law schools.

The Standing Committee is charged with

- using the Family Justice Initiative Principles developed by the National Center for State Courts and the Institute for the Advancement of the American Legal System as a framework for decision-making;³
- developing metrics for evaluating services provided to those going through DR cases;
- supporting local DR best practices teams in the state's judicial districts and making best practice recommendations;
- exploring online dispute resolution options for family court users; and
- advising the chief justice on ways to improve the "user experience" in DR matters.

To further these charges, the Standing Committee has several working groups, including the Child-Focused Innovative Practices (CFIP) Subcommittee, the Bench-Bar Subcommittee, a subcommittee exploring the adoption of DR-specific rules, and a subcommittee focused on best practices for *Sorenson* hearings, which are held to evaluate the need for appointment of a guardian ad litem (GAL) for a party in a DR case.⁴

The CFIP Subcommittee and Judicial Education

The CFIP Subcommittee has focused on several priorities derived from the Family Justice Initiative Principles: (1) that all judicial officers be trained in domestic relations law, procedures, and best practices, including case management technique; (2) that all judges and court staff be

versed in and able to apply trauma-informed processes; and (3) that the Judicial Department explore an opt-in pilot problem-solving court model for DR cases.

As detailed below, judicial training has been the primary focus of the subcommittee in recent years. Trauma-informed education is a perennial priority for both judges and staff. A new statewide training committee is part of the Judicial Department's Workplace Culture Initiative, and trauma-informed service training for all members of the Judicial Department will be one of the priorities of that committee. And the CFIP Subcommittee has recently started working with a judge from Massachusetts who created a DR problem-solving court in that state to explore how the Judicial Department might establish a similar pilot project here.⁵ The subcommittee is currently evaluating how the Massachusetts model might work within the current structure of Colorado courts.

But the energy of the CFIP Subcommittee in the past few years has been directed toward ensuring that judges new (or returning) to a DR docket start with core training, including extensive education on domestic violence and the needs of children. In 2022, the subcommittee rolled out the first session of a day-long program titled "Five Things You Need to Know as a DR Judge When You Have a DR Docket for the First Time or the First Time in a Long Time." This comprehensive curriculum is now presented as part of the annual Judicial Conference and includes sessions on case management, domestic violence, child development, financials, and issuance of permanent orders. Beyond being a regular component of the Judicial Conference, it is also offered at other times during the year to maximize access to the programming for judges new to a DR docket.

In addition to this education focus by the CFIP Subcommittee, the entire Standing Committee has committed to monitoring the Judicial Department's DR curriculum for judicial officers. And the Standing Committee is only one part of the State Court Administrator's Office taking on that responsibility. The Office for Judicial Education has recently established a committee specifically focused on ensuring that the Judicial Department is offering robust and continuing education for

judges who carry DR dockets. Programming already available includes the following:

- During "New Judge Orientation" and "Advanced New Judge Orientation," classes focus on topics that cross subject matter areas (but are essential for family matters), such as working with self-represented litigants, language access, communication, evidence, case management, working with difficult lawyers, and domestic violence fundamentals.
- Each summer, the Domestic Relations/Probate Institute offers a dedicated three-day comprehensive training on all aspects of family law. This year's programming includes sessions on child development and decision-making, addressing the needs of adolescents in DR cases, updates on new legislation regarding domestic violence and the use of professionals such as child and family investigators and parental responsibilities evaluators, updates on the federal Indian Child Welfare Act, and DR basics related to finances, case management, and the issuance of orders.
- The Judicial Department maintains a significant library of on-demand training that covers a wide range of DR topics, including domestic violence, coercive control, and understanding victim behavior.
- The Department has also recently updated its Bench Card Collection, which includes 17 bench cards (short two- to four-page reference cards) that cover areas from the allocation of parental responsibilities to uncontested dissolution of marriage or legal separation.
- In addition to these programs developed by the Judicial Department, the Department embraces the many opportunities to engage with and be educated by the CBA Family Law Section. Specifically, the section's *Domestic Relations Bench Bar Book*, published most recently in 2021, is widely relied on by judges. Likewise, many judicial officers attend the annual Family Law Institute—the preeminent training for any family law practitioner in the state—and other CLE offerings throughout the year.

- Finally, during the 2023 legislative session, the General Assembly passed a bill requiring a task force of judges and stakeholders to meet during the summer of 2023 to discuss what kinds of additional education would help judges hearing DR cases. That task force issued a report including 23 recommendations to improve judicial education, particularly regarding domestic violence and sexual assault.⁶ The Standing Committee will be working in tandem with the Judicial Education Committee to develop programming responsive to these recommendations.

In addition to educational programming, the CFIP Subcommittee has been working with others in the Judicial Department, including members of the Bench-Bar Subcommittee, on developing peer mentorships specifically for judges new to DR dockets, and a number of senior judges with experience in domestic cases have volunteered their time to serve as mentors.

As the CFIP Subcommittee moves forward with its examination of problem-solving models for resolution of family matters and how they might be integrated into Colorado courts, active engagement from the Colorado bar will be essential. In conversations with members of the DR bar, we have heard concerns that judicial officers might not understand the dynamics at play in family disputes. The Standing Committee works to support judicial officers making decisions in this complex and emotionally fraught area of the law. We welcome community engagement in this effort.

The Bench-Bar Subcommittee

In the fall of 2022, Chief Justice Brian Boatright, working with the Standing Committee and executive membership of the CBA Family Law Section, hosted a meeting of 10 judicial officers and 10 attorneys, all experienced in family law. The summit's goal was to focus on communication, professionalism, and building trust through an honest conversation about bench-bar relationships in the front range courts, with a secondary goal to discuss areas of agreement where the bench and bar could

DOMESTIC RELATIONS CASES FILED IN FISCAL YEAR 2023

JUDICIAL DISTRICT	TOTAL CASES	TOTAL CASES W/O ATTORNEY	CASE LEVEL PRO SE RATE	TOTAL PARTIES	TOTAL PARTIES W/O ATTORNEY	PARTY LEVEL PRO SE RATE
1	2,559	1,597	62%	5,199	3,696	71%
2	3,884	2,731	70%	7,983	6,331	79%
3	150	117	78%	314	266	85%
4	5,418	3,615	67%	11,004	8,306	75%
5	501	285	57%	1,011	693	69%
6	325	218	67%	666	495	74%
7	645	463	72%	1,335	1,063	80%
8	1,727	1,081	63%	3,526	2,542	72%
9	475	303	64%	963	710	74%
10	1,113	839	75%	2,410	2,004	83%
11	529	368	70%	1,083	854	79%
12	320	260	81%	664	581	88%
13	457	343	75%	945	789	83%
14	261	150	57%	527	350	66%
15	114	97	85%	238	209	88%
16	195	151	77%	427	365	85%
17	3,058	2,060	67%	6,286	4,815	77%
18	4,926	2,987	61%	9,995	7,012	70%
19	1,966	1,303	66%	4,109	3,129	76%
20	1,214	743	61%	2,465	1,735	70%
21	986	702	71%	2,079	1,662	80%
22	164	134	82%	333	291	87%
Total	30,987	20,547	66%	63,562	47,898	75%

Domestic relations cases include dissolutions of marriage and civil unions, allocation of parental responsibility, administrative support orders, marriage invalidity, and legal separation. The parties included in this measure were petitioner, co-petitioner, and respondent. As this table demonstrates, 66% of the domestic relations cases filed in fiscal year 2023 had no attorney on the case, meaning that every party involved was pro se. However, within that group of cases filed, there were 63,562 parties and, of those parties, 75% did not have representation when the data was extracted. When this data was broken out by specific case types, the party pro se rate was fairly consistent with the overall rate.

Source: Colorado Judicial Branch Cases and Parties Without Attorney Representation in Civil Cases Fiscal Year 2023 at 4 (July 11, 2023), <https://www.courts.state.co.us>.

align on shared goals and vision for improving the handling of cases in the front range. Both judges and attorneys perceived a need for change—all agreed that cases seemed to move too slowly, that they were contentious, and that judicial officers handling DR cases were overworked and under-resourced.

There was, however, disagreement about how to solve these problems. Attorneys pointed to inadequacies within the Judicial Department as the root of the problem, stating that judges restrict argument time inappropriately and take too long to schedule and produce permanent orders. Judicial officers agreed that the shortage of resources within the Judicial Department had an impact on DR dockets. In several of the districts with the highest number of DR cases, weighted caseload studies show a need for as many as five to seven additional judicial officers and attendant staff support. But judges also note that lawyers arrive at scheduled hearings unprepared and that they are uncivil with each other and with the court.

At the end of the half-day summit, participants agreed that there was a need for continued conversation to address some of the places where DR practice could improve in Colorado. It was this understanding that prompted the creation of the Bench-Bar Subcommittee, which was tasked with continuing the dialogue that began in the fall of 2022. Some of the ideas that participants agreed should be further explored included:

- regular bench-bar summits;
- creation of DR best practices teams across the state;
- education opportunities/requirements for judicial officers and attorneys working in DR matters;
- judicial officer and attorney mentoring;
- longer hearing times;
- support from the State Court Administrative Office on DR ideas and initiatives;
- administrative handling of matters when possible; and
- investigating a problem-solving court approach for DR matters.

After almost two years of subcommittee meetings, the Bench-Bar Subcommittee is planning to hold a second summit in the fall

of 2024 that includes a broader cross-section of the DR community. We realized that the first summit's cohort captured only a particular category of DR practice—high-end, high-conflict cases in the metro area, where most dockets are dedicated DR dockets (meaning the judges on the cases handled only DR cases). Looking across the state, our courts are much more diverse, and the range of challenges is therefore more complicated.

Some of the diversity comes from the reality that docket size varies wildly. In the district with the largest number of DR cases (the 4th), 5,418 DR cases were filed in fiscal year 2023, while in the district with the smallest number (the 15th), only 114 DR cases were filed (see the accompanying table). Some of the diversity comes from variation in the number of pro se versus represented parties. In the 20th Judicial District (Boulder and the

surrounding areas), for example, 61% of the DR cases involve unrepresented parties, while in the 12th Judicial District (the San Luis Valley), unrepresented parties are included in 81% of DR cases. And some of the diversity comes from district choices about whether to put judges in dedicated dockets or mixed dockets. As the Bench-Bar Subcommittee considers where to focus its attention going forward, it will need to address how these docket differences impact best practices for DR cases.

More generally, given Colorado's culture of local control, encouraging the development of best practices teams in each judicial district will be a priority for the Bench-Bar Subcommittee so that lawyers, judges, and other court staff can work together on a local level to agree on good principles for case management. Today there are active best practices teams in the 1st, 4th, 8th, 18th (Arapahoe), 18th (Douglas), and 19th

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judicial districts. Attorneys who are interested in being part of a best practices team should reach out to the Standing Committee for ways to get involved.

As planning for the second Bench-Bar Summit gears up during the summer and fall of 2024, lawyers and judges who are interested in participating or suggesting topics for conversation should reach out with ideas. The Judicial Department has created a dedicated email for outreach at benchbarsummit2024@judicial.state.co.us.

Domestic Relations Rules Subcommittee

In 2023, the Standing Committee established a subcommittee to consider the creation of a set of DR-specific procedural rules. The potential benefit of procedural rules specific to DR cases comes from a recognition that

[u]nlike civil cases, which frequently involve a snapshot in time of past events, the issues in many domestic relations cases evolve throughout the course of a case and well into the future. Resolution of family disputes requires an assessment of past events to shape future behaviors and relationships. The dispute resolution process itself must be fluid and flexible in this evolving environment.⁷

Starting with this recognition, a subcommittee composed of attorneys, paralegals, court personnel, and non-legal professionals was assembled to consider whether Colorado could benefit from the development of a set of comprehensive DR-specific rules.


The subcommittee determined that there were good reasons to draft a set of rules for family cases. First, these cases are different: whether they involve represented parties or self-represented litigants, they evolve over time and they involve continuing relationships among the parties and between the parties and the courts. Second, in 75% of DR cases in Colorado at least one of the parties is self-represented, and the number is even higher in some jurisdictions. Establishing rules specific to DR cases would permit variations, such as informal trial processes, for cases in which neither party is represented by an attorney. The subcommittee noted that these informal trial processes have

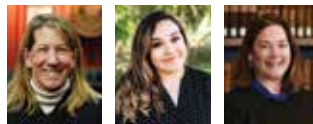
been used recently in a number of states and have been well received.⁸

Once the subcommittee decided it wanted to see what a separate set of DR rules would look like, it broke into smaller working groups based on the following topics: getting started; case management and motions practice; discovery and disclosure; hearings and evidence; enforcement; post-judgment and appeals; and ADR and other professionals. Each group is reviewing the currently applicable Rules of Civil Procedure to assess whether there could be improvements to them as they operate within the realities of DR practice such that a DR-specific rule should be created. The subcommittee's goal is to have a draft of DR-specific rules to share with the Colorado Supreme Court early in the fall of 2024. These rules would not be proposed as amendments to the Colorado Rules of Civil Procedure but as a stand-alone set of DR rules. If the Court is

interested in adopting these rules, they will be published for public comment and a hearing.

Conclusion

More than 20 years after the Standing Committee on Family Issues was established, the challenges that the committee was created to address continue, albeit in modern and evolving form. DR cases are enormously complex—though they are often misunderstood as lacking legal complexity. For one, these cases require practitioners and judges to understand many other areas of law and to interact with different cultures and people. Additionally, their complexity requires community collaboration outside of any specific dispute to develop a framework within our adversarial system that is less adversarial, more respectful of the ongoing relationships among the family members, and still cognizant of the individual rights of the litigants. This is no small task. 



Judge Catherine Cheroutes is a district court judge in the 5th Judicial District sitting in Clear Creek County (Georgetown) and Lake County (Leadville). She took the bench in February 2019 and handles a mixed docket encompassing all manner of cases from adoptions to complex criminal matters. Judge Cheroutes is the chair of the Standing Committee on Family Issues—catherine.cheroutes@judicial.state.co.us. **Alexis Fredrickson** is the domestic relations programs coordinator at the State Court Administrators Office, where she coordinates and oversees a variety of initiatives aimed at providing resources and solutions to support judicial branch employees and the families who engage with the Colorado judicial system. She oversees and manages the Standing Committee on Family Issues and its subcommittees—alexis.fredrickson@judicial.state.co.us. **Justice Melissa Hart** has served on the Colorado Supreme Court since 2017. She is the liaison to the Standing Committee on Family Issues—melissa.hart@judicial.state.co.us.

NOTES

1. Each judicial district has at least one family court facilitator who helps litigants prepare their cases before they are presented to the court. In some districts, the family court facilitators work with all parties, and in others they work only with unrepresented litigants.
2. Self-represented litigant coordinators work in each of the judicial districts to assist litigants without representation as they navigate the court system.
3. *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.
4. These hearings derive their name from *In re Marriage of Sorenson*, 166 P.3d 254 (Colo.App. 2007), in which the court of appeals held that where there is a substantial question as to a spouse's competence to proceed, the best practice is to hold a hearing to determine whether appointment of a GAL would be appropriate. The *Sorenson* Subcommittee is on hold at this time while the DR Specific Rules Subcommittee considers whether new DR-specific rules might apply to *Sorenson* hearings.
5. Information about the Massachusetts Family Resolutions Specialty Court can be found at <https://www.mass.gov/info-details/family-resolutions-specialty-court>.
6. Colorado Division of Criminal Justice, Department of Public Safety, Judicial Training Taskforce House Bill 23-1108 Legislative Report.
7. *Family Justice Initiative*, *supra* note 3 at 2.
8. See, e.g., PUB-45, Domestic Relations Trials, Understanding the Two Options, <https://public.courts.alaska.gov/web/forms/docs/pub-45.pdf>.