

1 **New Hampshire Citizens Commission on State Courts**
 2 **Draft Recommendations for Consideration March 13, March 20**

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 4
 5 **Recommendation #12**

6 **Research Committee:** Family Court

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 8 **Recommendation:** Support for *Pro Se* Litigants in Family Division Cases

9 That the Family Division make available to *pro se* litigants critical
 10 information about the court process, the availability of alternative dispute
 11 resolution (ADR), and the impact of family conflict on children as early in
 12 the process of a family case as possible in order to improve the efficiency
 13 and reduce the adversarial nature of the process. Procedures to provide this
 14 information and support should include access to case managers by all *pro*
 15 *se* litigants, the requirement of early attendance at Child Impact Seminars,
 16 and the expanded use of technology to provide information about the court
 17 process, including ADR, at the outset of the case.
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19 **Rationale:**

20 For many *pro se* litigants in family cases, that case is their first contact with
 21 the court system. It is in the interest of all that this first contact be respectful
 22 and reassuring. *Pro se* litigants benefit from early access to knowledge and
 23 information about court conduct, rules and procedures; all available methods
 24 of handling disputes; and the effect that parental disputes has on their
 25 families. Basic information on these topics can be readily available to these
 26 litigants through the use of case managers. Case managers are trained court
 27 personnel who meet with *pro se* litigants as soon as possible after the case is
 28 filed to: (a) ensure that litigants understand the court process, accurately
 29 complete court forms, and are prepared for hearings; (b) foster
 30 communication between the *pro se* individual and counsel representing the
 31 other litigant; (c) assist the *pro se* litigant in the preparation of financial
 32 information in order to use the court's time most efficiently; and (d) direct
 33 the litigants to ADR or other services. Currently there are only five case
 34 managers in the Family Division. As the Family Division expands state –
 35 wide, the number of case managers should be increased to ensure their ready
 36 availability to all *pro se* litigants.
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38 In addition to the human face of the case manager as a resource for *pro se*
 39 family litigants, much of the basic information about court process and

1 services could be made available economically and efficiently through
2 websites and other technologies, including DVDs or CDs . Each Family
3 Division court site should have a computer station available to the public to
4 provide access to the court website for information and forms.

5
6 The Child Impact Seminar is now required for all family litigants with
7 children. However, currently litigants can postpone attendance until the
8 court process is complete, which is often much too late. The value of the
9 Seminar would be maximized if litigants were required to complete it at the
10 very beginning of the case. Required early attendance should help reduce
11 the occurrence of common high – conflict parental behavior that is
12 profoundly damaging to children.

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15 **Recommendation #13**

16 **Research Committee:** Family Court

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18 **Recommendation:**

19 Expanded and Creative Use of Alternative Dispute Resolution in Family
20 Division Cases

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22 The Committee recommends that the Family Division actively and
23 creatively research and experiment with all reasonable forms of alternative
24 dispute resolution (ADR) in family related cases to expand the availability
25 and use of ADR in Family Division Cases.

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27 **Rationale:**

28 According to the NH Supreme Court Task Force on Self Representation,
29 more that 70% of marital cases involve at least one self represented party.
30 The balance of cases within the jurisdiction of the family division involve an
31 equally high or higher percentage of self represented parties. Each of the
32 major reports issued by various legislative and court committees has
33 recommended the increased use of ADR in family related cases. The Family
34 Court Committee is strongly supportive of the goal to decrease the
35 adversarial nature of family cases. Sensitive issues related to the well being
36 of children cannot be best resolved in an atmosphere of hostility. The
37 committee also feels strongly that the use of ADR should not begin and end
38 with traditionally accepted forms such as mediation and neutral case
39 evaluation. While these are critically important and should be expanded to
40 all cases, not just those involving children, the Committee urges the Family

1 Division to be creative in its search to offer a non-adversarial process in
2 which families find all of the tools necessary to resolve their disputes by
3 agreement rather than by court order. Such initiatives as the First
4 Appearance, use of Parenting Coordinators, and the availability of Child
5 Impact Programs at court locations during the same days that divorcing
6 parents are already scheduled for hearings reflect the types of creative
7 thought and experimentation that we believe need to continue as a priority of
8 the judicial branch. While the Committee is aware of the Supreme Court's
9 efforts to advance ADR at all court levels, it urges the Court to place a
10 special emphasis on the Family Division. ADR holds the greatest potential
11 for positive change in the current family law process.

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15 **Recommendation #14**

16 **Research Committee:** Family Court

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18 **Recommendation:**

19 Use and Oversight of Guardians ad Litem in the Family Division

20 It is recommended that the court critically review its use of Guardians ad
21 Litem in family cases in light of the state – wide expansion of the Family
22 Division and its increased use of alternative dispute resolution (ADR). It is
23 further recommended that the training and supervision of guardians ad litem
24 in family cases and the oversight of the quality and cost of these services be
25 improved.

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27 **Rationale:**

28 With the state- wide expansion of the Family Division and its emphasis on
29 one case/one judge and the emphasis on the increased and creative use of
30 ADR, it is crucial that the court critically examine how, when, and why the
31 court appoints guardians ad litem in family cases.

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33 The complex issues of how to address concerns about the role, cost, training,
34 supervision and discipline of guardians ad litem have been examined by a
35 number of legislative, judicial and other public entities in the last ten years.
36 It was beyond the scope of the work of this research committee to make
37 definitive recommendations about possible solutions to these issues.
38 However, because of the apparent public concerns with aspects of the
39 current system, it is recommended that the Commission place this topic on a
40 list of concerns that require further review and examination. Possible

1 strategies to address concerns about guardians ad litem in family cases
2 include, but are not limited to:

- 3 • Require that all guardians ad litem be certified according to a set of
4 best practice standards.
- 5 • Expand the regulatory authority and funding for the Guardian ad
6 Litem Board.
- 7 • Development of a variant of a public defender/contract attorney
8 model to provide guardian ad litem services in family cases.

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11 **Recommendation #15**

12 **Research Committee:** Family Court

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14 **Recommendation:**

15 Resources Necessary to Support State – Wide Expansion of the Family
16 Division

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18 That the Judicial Branch support the state – wide expansion of the Family
19 Division during the transition period by providing sufficient staff resources,
20 including judges, masters and support staff, and training staff on family
21 issues. Adequate staff and training resources are necessary to ensure the
22 successful expansion of the Family Division while maintaining the existing
23 court functions during the transition.

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25 **Rationale:**

26 The transition to a state – wide Family Division over the next several years
27 will be greatly enhanced by training staff on family issues. Knowledge of
28 and sensitivity to family issues are one of the key determinates of client
29 satisfaction and effective practice. In addition, the reorganization and
30 reassignment of staff as part of the expansion of the Family Division is a
31 considerable undertaking. Adequate staff resources must be provided to
32 support both the transition and the ongoing operations of the court system
33 during the period of transition. Our decision to prioritize this
34 recommendation fourth should not be understood to suggest that we believe
35 that staff and training resources are not important to the successful
36 implementation of the state – wide Family Division. Instead, our
37 prioritization reflects our conviction that the Judicial Branch already has the
38 legislative mandate and the administrative authority to allocate adequate
39 resources to the Family Division expansion. The willingness of the Judicial
40 Branch to assume the responsibility to provide the necessary resources to

- 1 this transition will determine whether the other three recommendations from
- 2 the Family Court Research Committee will move forward.