

Family Court Backlogs Keep Everyone Involved From Moving On

By Fred Silberberg

Our family court system exists for a reason: to resolve disputes that the parties are unable to resolve on their own. They have an obligation to the public — to resolve matters in an equitable and timely manner. Our family courts are failing the public in that regard.

Family law case filings have, over the past 15 years, increased. The number of people who file cases without legal representation has also increased. Yes, this puts a bigger burden on the court system. It does not, however, mean that the system is allowed to put justice on hold because it is more convenient. The court has a duty to the public that comes before it. The family court has, as a whole, failed dismally to meet that duty. It is time to stop making excuses and deal with the problem.

There is an age-old adage that has been oft-quoted in legal circles: "Justice delayed is justice denied." If someone cannot get a legal grievance addressed promptly, it is

tantamount to not being addressed at all. In our present family law system, that is the absolute truth. But in family law, that truism has consequences that are not present in other proceedings, and they can affect the most vulnerable in our society: children. Imagine for a few moments being one of those children: not knowing what the ultimate outcome of the case will be, not knowing where you may be living in the future, not knowing what the custody arrangements will be, and if that is not enough, being caught in the middle of two feuding parents whose hostilities only get worse the longer the case languishes.

The court's typical answer to why things take so long, and why there are so many delays, is an alleged lack of sufficient family law judicial officers to hear cases. Two other oft-touted excuses are that there are too many people unrepresented by counsel, and who take up the system's resources trying to navigate through it. Another excuse is that judges cannot keep up with the paperwork filed by lawyers, which

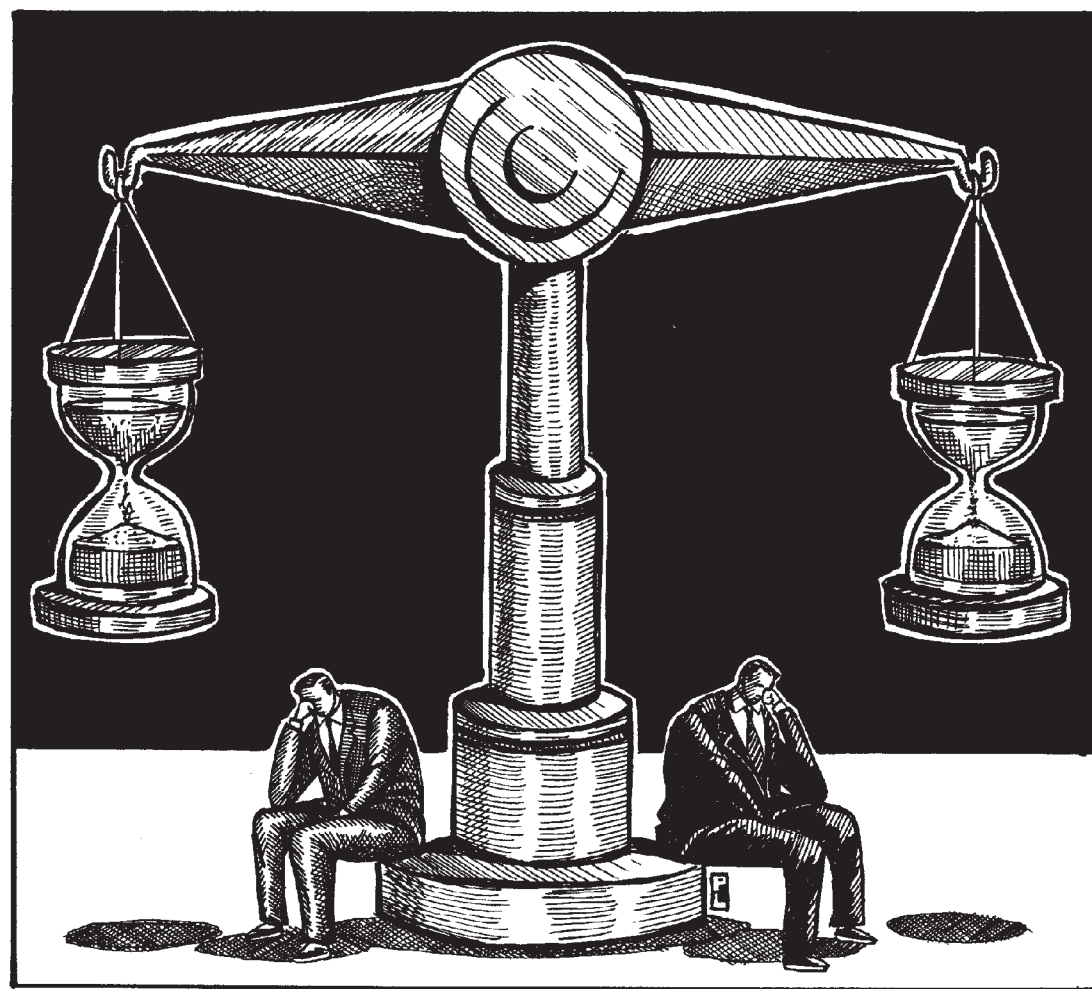
has to be read before each hearing.

While no one doubts that there is a lot of work involved in hearing family law cases, the fact is that the system has gotten out of control because the courts have failed to respond to the change in the nature of family law litigation, on the one hand, while propagating a system that clogs the courtrooms with unnecessary paperwork, on the other. The solutions to these problems are all attainable if our court administrators would make their minds up to address them.

Take the civil courts, for example. It used to be that in larger metropolitan districts, getting a civil case to trial, particularly a jury trial, could take up to five years. In those days, which were not all that long ago, the courts gave us the same story — there were not sufficient bench officers to process the cases, and the court system was overburdened. Today, that is no longer the case. The implementation of case management procedures and strict controls placed on the prosecution of civil cases has resulted in the backlog being dramatically reduced. At the present time, it is not uncommon to file a civil case and have it go to a jury trial in less than a year. At the same time, contested family law cases can often sit for multiple years before they are finally disposed of through trial.

In the civil courts, cases are pushed through the system with as much expediency as possible. Discovery must be completed on time and prior to the discovery cutoff. Continuances are disfavored. Trial dates are set and they remain firm. There is a significant push toward alternative dispute resolution. Sanctions are ordered when lawyers do not comply with the rules. Judicial officers take control of their cases and push them through the process to get them done, either by settlement or trial. Cases that are not timely prosecuted are dismissed.

In family law, the opposite is true. Cases are continued more often than not. Discovery cutoff dates are not adhered to. Trial dates are often meaningless, and the lawyers to whom those dates are assigned know that. It is generally assumed by the family law bar that just about any matter can easily be continued. And each time it is continued, unlike in a civil case, the deadlines that follow are also continued. Many judicial officers theorize that the family law court is one of equity; so allowing the required updating of discovery and revision to court forms is appropriate. Yet, there is no compelling reason for doing this. The environment, clearly sanctioned by the court, fosters delay as the modus



operandi. The result is that people often cannot get a result, and the expense associated with all of the delays, updating and revising, can be tremendous.

When a civil case goes to trial, the trial starts and runs from beginning to end. In a family law case, the trial almost never goes from beginning to end without stopping, unless it is one of the few cases assigned to a special long-cause department. The trial starts, goes for a while, and is continued to another date. There are often long gaps in the presentation of evidence. Each continuation results in the litigants or the lawyers having to gear up again. Each continuation results in further costs. Trials are supposed to have priority, but the truth is that in family law court, they do not. They are interrupted not only by ex parte applications, other motions or the family law calendaring system itself, which in most larger courts dictates that trials are to be heard on Wednesday afternoons, Thursdays and Fridays, and not the entirety of the week.

If family law cases were treated in the same manner as civil cases, the delays would be significantly reduced. If trial dates were held firm and set in the reasonably foreseeable future, cases would likely

get resolved. If the discovery rules were enforced, litigants and lawyers would know that they had to get the work done by a date certain and cases would have a timetable for resolution.

It is true that there are many people who are not represented in divorce proceedings, and that they are not familiar with the rules and procedures. This lack of familiarity can result in delays when the correct forms are not filed, and process isn't timely served. But these cases typically are less time-consuming because the individuals representing themselves do not know to file lengthy declarations and objections. Courtrooms are often crowded with unrepresented litigants and when several such cases come up in a row, it delays the remainder of the calendar. Another delay is the wait associated with getting an interpreter. These delays cause others to have to wait as well. In some counties, this has been addressed by setting certain days as pro per-only days, during which time the bench is dedicated to addressing those cases, leaving other days open for parties represented by counsel. All counties should implement such programs in their family law departments to move the cases through more quickly.

As for the mountains of paperwork, the filing of declarations

and motions to strike declarations, and the difficulty the judicial officers have in reading everything, these problems are ones the court has caused itself. If judges cannot spend hours each night reading declarations and counter-declarations, and ruling on motions to strike, the problem can be solved by not requiring them. Have the parties present and ready to testify on the date assigned, and the information can be imparted to the court, and the evidence ruled on at the time it is introduced. While some proceedings may become a bit more time-consuming than arguing over declaration testimony, the end result will be a substantial savings of judicial officer time and the ability to move cases forward as a whole more expeditiously.

Family law courts have had more than ample time to implement these types of procedures. The failure to address cases in the manner in which they have been addressed in civil courts has resulted in a worsening backlog. It should be the court's priority to get such cases resolved. Litigants should not be prevented from moving on with their lives.

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