

A Legal Practitioner's Call for a Unified Family Court System in Nebraska

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Despite the best efforts of Nebraska's dedicated attorneys, judges, legislators and other stakeholders, Nebraska's court system is at risk of failing families. The state's fragmented courts severely impair the ability of the judicial system to provide meaningful, timely relief to families and their children when those families are involved in multiple court cases across the system. This lack of a cohesive structure is a problem for taxpayers as well as it wastes judicial resources and taxpayer dollars.

Though well intentioned legislators have attempted to rectify some of the problems in the current system, there has been little, if any, effective reform. The time has come for

investigation by resolution of the Nebraska Legislature into the viability of a Unified Family Court structure and potential ways to implement a Unified Family Court in a manner that best serves the needs of Nebraska and its diverse judicial districts.

The Problems of Fragmented Courts

With the findings presented in the *Unified Courts for Families Deskbook*, the Judicial Council of California/Administrative Office of the Courts summarized the myriad problems of a fragmented approach to family law courts. They include:

- a. Unnecessary scheduling of court time and resources across multiple courts rather than the ability to dispose of all pressing issues at that phase of the litigation with a single hearing before a single court;
- b. Some aspects of a dispute being adjudicated more than once by more than one court;
- c. Inadequate filings and other procedural issues involving pro-se litigants, which waste judicial resources by causing continuances and dismissals;

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- d. Critical information unavailable to judges, thereby potentially interfering with their ability to make comprehensive, fully informed decisions;
- e. The danger of conflicting orders being issued by different judges in different courts, or – conversely – judges in District Court being hesitant to make any orders whatsoever if a juvenile court has jurisdiction over a child involved in a District Court domestic relations matter;
- f. Inadequate training of court personnel for dealing with family and child development;
- g. Long wait times for hearing dates and/or in the courtroom, and lack of responsiveness to parties;
- h. Lack of information about risk, resulting in family members and court staff safety being compromised.
- i. Failure to identify underlying issues in domestic relations cases such as substance abuse and domestic violence.¹

Nebraska attorneys who work between the Juvenile, District, County and Probate courts navigate through these types of problems every day. Despite efforts to stitch together a silk purse of justice from the sow's ear of Nebraska's current system, the result is most often unnecessary delays that result in further breakdown of families and a waste of judicial resources and taxpayer dollars.

A particularly common scenario involves a non-custodial parent whose child is removed by the State from the custodial

parent due to allegations of abuse/neglect on the part of the custodial parent. Despite there being no allegations against the non-custodial parent, they are often denied custody or even placement of their child for months (or longer) until either the Juvenile Court is satisfied that reunification with the offending custodial parent is not likely or reunification with the offending parent occurs and Juvenile Court jurisdiction is terminated.

The battle resumes with a District Court custody action where the same evidence that was already proved in the Juvenile Court is put before a different judge in District Court to attempt a change in custody. This is an obvious waste of time, money and resources.

Growing Backlog in District and Juvenile Courts Hinders Justice

In addition to the complexity, redundancy and waste inherent in the current court system, the backlog of cases it produces in both District and Juvenile Courts can leave parents without an avenue for meaningful, timely relief, and perhaps even results in a denial of access to the courts. Statistics show this is a growing problem:

- In 1988, domestic relations cases comprised 31 percent of new filings in Douglas County District Court²
- By 2010, domestic relations cases had skyrocketed

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eted to 59 percent of the District Court's docket

- Between 2008 and 2010, the median number of days between the filing of a Juvenile Court Petition and adjudication has increased from 28 days to 84 days. Both adjudications and dispositions are taking far longer than best practice guidelines³

It's clear the need for a cohesive way to deal with these cases in the interest of justice is only growing stronger as backlogs increase.

A Case Study

Those cases hindered by these problems and delays are more than mere statistics, of course. They represent real families with a real need for meaningful, timely relief. For instance, readers of the *Omaha World-Herald* and *Lincoln Journal Star*, recently learned the story of Army Sgt. David Sanders, a father just back from Afghanistan (the author's law firm is involved). As reported by the newspapers, Sgt. Sanders' inability to obtain timely relief resulted in a lingering court battle to have his daughter placed in his care.⁴

As reported by the media and set forth in public court documents, the court proceedings began after Nebraska Health and Human Services, Child Protective Services (CPS), informed Sgt. Sanders that his daughter would soon be removed from her mother's home and placed into foster care due to evidence of neglect on the part of the mother – unless Sgt. Sanders could obtain an immediate order of temporary custody.

The mother, who had legal custody under a previously entered divorce decree, lived in Omaha with the child. Sgt. Sanders lived with his family at an Army base in Colorado.

Counsel for Sgt. Sanders attempted an emergency ex-parte motion for immediate temporary custody of his daughter, which was denied by the District Court. It was denied despite evidence of the emergency nature of the motion, including CPS concerns of risk for harm to the minor child if left in the mother's care, and the agency's plan to have the child removed from the mother and placed into foster care if Sgt. Sanders was unable to obtain immediate temporary custody.

CPS then referred the matter to the Juvenile County Attorney's office and an abuse/neglect petition was filed against the mother in the Separate Juvenile Court pursuant to Neb. Rev. Stat. §43-247(3)(a). The child was placed in foster care. And Sgt. Sanders' struggle to obtain placement and/or custody of his daughter by order of the Separate Juvenile Court for Douglas County began.

Sgt. Sanders filed a Complaint for Intervention in the Separate Juvenile Court for Douglas County in September 2011. On October 13, 2011, during a hearing on the record, he was granted leave to intervene. However, on that same day, the Juvenile Court declined to immediately order Sgt. Sanders' daughter be placed with him, despite case law to the contrary.⁵

Instead, the Juvenile Court set the matter for further hearing. There wasn't time on the Juvenile Court's calendar to accommodate the further hearing for nearly two additional months – time Sgt. Sanders' child would remain in foster care.

On November 4, 2011, counsel for the Nebraska Department of Health and Human Services (NDHHS) filed a Motion for Expedited Hearing for Placement of the child with Sgt. Sanders. In the Motion, NDHHS stated "In support of its Motion, the Court is shown the Nebraska Department of Health and Human Services supports placement of the minor child with her father and believes it is in her best interest to hear the matter as soon as possible." The Juvenile Court, on November 7, 2011, issued an Order denying the NDHHS Motion for Expedited Hearing for Placement, stating that the court's calendar was "fully scheduled" through November 2011.

At the further hearing regarding placement with Sgt. Sanders that finally occurred on December 2, 2011, the Separate Juvenile Court granted Sgt. Sanders placement of his daughter, with the State retaining custody. Between the hearing in October and the hearing in December, to aid in his effort to protect his daughter, Sgt. Sanders took the extraordinary and burdensome step of moving his family to Omaha from their home at a Colorado Army base. In addition to this financial strain, Sgt. Sanders has had to finance litigation in two separate courts.

An active case regarding Sgt. Sanders' Complaint for Modification of Custody is perched in the District Court for Douglas County. The Juvenile Court has refused to take transfer of the District Court case, which, as of the writing of this article, is set for hearing before the District Court on Sgt. Sanders' motion requesting an order of temporary custody of his daughter conditioned upon the Juvenile Court terminating its jurisdiction.

The Sanders case is just one example of a problem that occurs on a regular basis. It's one more reminder that Nebraska needs to implement an authentic, meaningful solution – a Unified Family Court.

The Answer: a Unified Family Court

Many states have solved problems like those evident in Sgt. Sanders' situation by implementing a Unified Family Court. The most common model of such a court is the "one-judge/one-family" model – or comprehensive jurisdiction court.

The "one-judge/one-family" model provides that the same judge is assigned to one family and hears all the cases involving that family, regardless of in which court they take place.

Authorities such as The National Center for State Courts note this model's goal is to direct all information to one judge and reduce the chance for inconsistencies. It recognizes that one judge can make more informed and effective decisions



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on all matters regarding a family than could several different judges. The National Center for State Courts has recognized that having a single point of contact can also make courts more family friendly and give continuity to a family's time with the courts. As another benefit, it believes this model considers not only what is most efficient for the courts, but also what is most beneficial for the court's clients.⁶

California is one example of a state that has successfully implemented such a model. In 2004, after lengthy study, the Judicial Council of California/Administrative Office of the Courts published the *Unified Courts for Families Deskbook* as one component of California's Unified Courts for Families Program (UCF Program). The Program aims to accomplish state-level operational objectives for California courts, including goals of addressing the importance of access, fairness, diversity and the quality of justice and service to the public.

The Judicial Council of California recognized its goals were interdependent and that "to serve the ends of justice, the courts must be accessible to all people and treat each person fairly. To be a relevant and stabilizing force in society, they must be responsive to societal needs and foster the trust and confidence of the public." As part of implementing its goals, the Council deemed critical the objective of "improving the courts' management of family and children's cases, with particular emphasis on unifying and coordinating court procedures."⁷

Not a New Idea

The idea of a Unified Family Court is not new to Nebraska. In 1989, Senator Brad Ashford was the Principal Introducer of LB 478. The bill provided for the "creation of a family court system in certain counties; allowing family issues to be addressed in a comprehensive fashion."⁸ LB 478 died by indefinite postponement upon motion of Senator Ernie Chambers. Although the effort was not successful then, it's worth looking at as we move forward today.

LB 478 would have created a family court in Douglas County consisting of 5 judges. The family court was to have jurisdiction over all juvenile cases and adoptions, all divorces, annulments and legal separations and all paternity matters (except where a jury trial was demanded, which would have then been heard by a District Court).

Among champions of the family court concept of LB 478, were Voices for Children, Nebraska PTA, and the Honorable J. Patrick Mullen. At that point, Judge Mullen had been a District Court judge for about four years. Prior to that, he served as the Associate Juvenile Court Judge in Douglas County for nine years.


During his testimony before the Committee on Judiciary, on February 23, 1989, Judge Mullen stated his opinion that a family court such as the one proposed in LB 478 would provide many improvements, among them a specialization that he deemed

"very necessary in the family court area," as well as development of expertise in knowledge of resources available to families with difficulties. Judge Mullen further recognized the difficulty for a District Court judge to develop such expertise because of the other types of cases that are facing the District Court.⁹

The Time to Act Is Now

Is a unified family court system is best for the entire state, or only areas that exceed a certain population? What about subject matter jurisdiction and implementation procedures? These are all issues ripe for debate, and, as with the myriad issues surrounding the creation of a unified family court system, plainly appear to merit further study.

It is the author's hope that this article, while it only skims the surface of the issue, will inspire further study and action. It is humbly suggested that a good start may be a legislative resolution with the purpose of studying whether implementation of a Unified Family Court System in Nebraska is a viable solution to the current problems, and, if so to provide recommendations for statutory, rule and organizational changes; to develop specific guidelines for the implementation of a family law division within applicable districts; and recommend necessary support services.

The time to act is now. Nebraska families and taxpayers cannot afford for us to ignore this issue any longer. 

Endnotes

- ¹ *Unified Courts for Families Deskbook. A Guide for California Courts on Unifying and Coordinating Family and Juvenile Law Matters.* Judicial Council of California/Administrative Office of the Courts. (2004).
- ² "Ashford Bill Would Create Family Court," Omaha World-Herald, Monday February 13, 1989. Jeff Gauger, World-Herald Staff Writer.
- ³ Case Progression and Court Improvement Data Report for 2010, University of Nebraska at Lincoln Center on Children, Families, and the Law.
- ⁴ "Army Father Says his Daughter in Foster Care Belongs With Him," Lincoln Journal Star, September 27, 2011, JoAnne Young, Lincoln Journal Star; "Army Dad Put off Again in Plea for Placement of Daughter," Lincoln Journal Star, October 13, 2011, JoAnne Young, Lincoln Journal Star; "Dad Fights for Custody of Girl, 13" Omaha World-Herald, October 14, 2011, Jason Kuiper, World-Herald Staff Writer; "After Months of Wrangling Court Places Teen With Army Dad," Lincoln Journal Star, December 3, 2011, JoAnne Young, Lincoln Journal Star.
- ⁵ See *In re Stephanie H.*, 10 Neb.App. 908, 639 N.W.2d 668 (Neb.App. 2002).
- ⁶ Judicial Administration FAQs.(n.d.). Retrieved from National Center for State Courts: <http://www.ncsc.org/topics/judicial-officers/judicial-administration/faq.aspx#> What is the one judge one family model.
- ⁷ *Unified Courts for Families Deskbook. A Guide for California Courts on Unifying and Coordinating Family and Juvenile Law Matters.* Judicial Council of California/Administrative Office of the Courts. (2004).
- ⁸ Nebraska Legislature Committee Records, LB 478, 1989. Committee on Judiciary, Ninety-First Legislature, First Session.
- ⁹ Nebraska Legislature Committee Records, LB 478, 1989. Committee on Judiciary, Ninety-First Legislature, First Session.