



## Winter 2018- 2019 – Newsletter of the NOW Foundation Family Law Ad Hoc Advisory Committee

Dear Friends,

The purpose of the NOW Foundation Family Law Ad Hoc Advisory Committee Newsletter is to provide continuing education on family court issues to the general public and supporters of NOW Foundation. The newsletter contains current news and information regarding the ongoing crisis for mothers and children in family courts. As many of our readers are aware, protective parents – primarily mothers – are losing custody of minor children in court proceedings that often ignore evidence of battering or child abuse and grant custody or unsupervised visitation to the abusive parent.

We hope you find the information we share with you of value as you go about your work advocating for women and their children.

### **General Information**

A clearinghouse of materials the committee has compiled can be found at the NOW Foundation web site at this link, <http://now.org/now-foundation/crisis-in-family-courts/>. There are additional materials at the Chapters only web site on the NOW, Inc. website.

Family Law Advisory Committee Brochure is available at this link: <http://now.org/wp-content/uploads/2015/02/familylawbrochure7-08final.pdf>

## **Kentucky Creates Legal Presumption for Joint Custody Amid National Push by Fathers' Rights Groups**

This summer Kentucky became the only state to create a “legal presumption” for joint custody in divorce and child custody proceedings. Joint custody awarded to the mother and father will become the default rule in Kentucky child custody cases. Specifically, the new Kentucky law states that courts shall apply a “presumption, rebuttable by a preponderance of evidence, that joint custody and equal parenting time are in the best interest of the child.” Since the general test for making child custody determinations is “the best interest of the child,” a presumption that joint custody is in the best interest of the child is tantamount to saying that there is an initial presumption in favor of awarding joint custody and equal parenting time in every case being contested by the mother and father.

The new legal presumption for joint custody in Kentucky is a rebuttable – not a conclusive – presumption. This means that a parent who is opposed to joint custody has the burden of proof to show that joint custody is not in the best interest of the children based on the totality of the facts. In addition, a judge must deny joint custody if one of the parents has obtained a domestic violence protective order against the other parent within the last three years.

The Kentucky Coalition Against Domestic Violence opposed the new law. They and other opponents said the measure takes away discretion from judges and imposes an arbitrary presumption that prevents the court from credibly screening each individual parent and child to shape a custody order that is tailored to the children’s best interest. They also argued that it undermines protections against abusive parents and spouses.

According to Mary Savage, General Counsel for the Kentucky Coalition Against Domestic Violence, there are several instances in which an abusive parent/bios could be granted joint custody under the new law. For example, a parent with a serious history of domestic violence could be granted joint custody if the domestic violence victim did not obtain a protective order during the last three years, or if a violent act was committed against someone besides their spouse or child.

The term “joint custody” (or “shared custody”) can mean several different things. It can mean joint legal custody (the power to make important decisions regarding the child’s upbringing, schooling, medical care, religious affiliation, etc.) or joint physical custody (equal parenting time), or it can mean both joint legal and physical custody. Under the new Kentucky law, there is a presumption in favor of both joint legal and physical custody.

Kentucky is the first date in the country to create a legal presumption for joint custody in divorce proceedings. However, more than 25 states are now considering or have recently considered joint custody bills in their state legislatures which would create a presumption in favor of joint custody. For example, Maryland, Michigan, and South Carolina all have pending presumptive joint custody bills. In addition, the Florida legislature overwhelmingly approved a bill to require child custody plans to provide for equal parenting time, but it was vetoed by the governor. The new Kentucky law may provide new impetus for the passage of similar legislation in other states.

Thus far, the principal antagonists in these state-level legislative battles have been the National Parents Association (NPA) and other fathers' rights groups on one side, and on the other side state domestic violence coalitions, legal aid programs and allied organizations. The fathers' rights groups have expanded their membership and political clout across the country, and there are NPA chapters in many states. However, these laws can be harmful to both mothers and children and give abusive fathers-spouses greater leverage in divorce and child custody proceedings. NOW members and state/local chapters should closely monitor what is happening in their states be prepared to alert potential allies to the existence of draconian joint custody legislation in their states.

### **The Importance of Community Court Watch**

One important aspect of our lives is the law and how it works for everyday people. Yet most of us do not think about courts, judges or what happens in the local court until we find ourselves, a family member or friend involved in a court proceeding, or until we have been called in for jury duty. Furthermore, voluntary civic involvement is not often thought of these days with people struggling to provide for their families. Many are working more than one job to make ends meet. Finding time to be involved within the community is difficult in our modern society.

There are community organizations for various issues, such as senior groups, garden clubs, religious groups, book clubs, bike clubs, running clubs; you name it, and there is a group for that. So why not a court watch? One major pitfall to community involvement is the courts operate during the day when most people are at work. This limits who can take part in, or become involved in, monitoring our local courts. Courts are often filled with people waiting to hear their case, but few observers are present to look at what is happening. Many people feel they do not know enough to monitor a court hearing.

Now more than ever, it is important for citizens to pay attention to what is happening, especially in our family courts. Citizen involvement in the judicial system is extremely important to the improvement of our judicial and democratic systems.

A court proceeding is nothing like what you may see on television. Most people in a civil court are there without an attorney to represent them. In a civil case, lawyers are not appointed; you must hire one or go it alone. The cost of hiring an attorney is often beyond the ability for many to afford and appear in court "pro se" or self-representing. While there are those who, depending on the situation, can navigate the court maze, many are not able to do so. Depending on the issues involved, the results can be devastating. Especially in family courts, where the decisions regarding a family's assets and the custody of children, if involved, can have effects that are felt lifelong.

There are various types of court watch programs, depending who is involved and the desired goals. Some examples are programs that focus on criminal, domestic violence, bail bond, or family law. However, we need many more observers in family and criminal courts. These programs can operate with different methods. Some programs are funded, and others operate on the passion of a few volunteers. Monitoring where friends or

family may go in and watch what is happening would be considered a support court watch, mostly to support that litigant so they are not alone. Other programs are designed for collecting data to determine if the judges are following the law and protecting victims. Some groups have gathered to bring attention to a judge they feel is harming the parties, public, and the judicial system. Some monitoring groups may extend their efforts by picketing the court, writing an amicus brief, or filing judicial complaints from their observations. Still other programs may be collecting information to share with the judicial system, legislators, and the media to support improvements.

Methods of data collected can be through a form that directs the observer to watch for various concerns, such as: Is the judge respectful? Are the lawyers involved on time and prepared? How do they speak about the parties involved? Are all parties present? Is the judge giving each side enough and equal time to hear the evidence? If there are abusive issues or danger involved in the case is the safety of the parties a priority? Is the result fair? Additionally, information will include names of Judges, lawyers, the parties involved. Demographic information on where the court is, case number, time of hearing, and date. Lastly, recording the court's ruling or finding. Depending on the goal of the observational instruments, it can be a couple of pages, seven pages to many; it all is about what the programs goals are when monitoring.

Observations could also be made outside the courtroom to determine if the building is clean, comfortable, and accessible to all, including the disabled. Are employees helpful and able to direct citizens to the help or information they may need? These are important aspects to address when we investigate our local courts to determine if they are indeed treating the public they are to serve with respect.

One well known court monitoring program is Mothers Against Drunk Drivers (MADD). MADD has been successful at changing societal attitudes and the laws regarding drunk driving. The domestic violence coalitions around the country, through court monitoring programs, have been instrumental in improving the safety of victims, both inside and outside of the court. There is still room for many improvements in all areas of the law.

The involvement of the community, including you, can do incredible things to improve the courts and how they operate, treat, and provide justice for everyday people. These programs, started by family, friends, activists and you, can be very successful in supporting and developing innovations that can improve the judicial system, laws, and improve access to justice for all citizens.

There are NOW chapters all over our country. Many have active court watch programs. If yours does not, why not join and start a court watch in your area? If you need information or support in how to begin, contact your local NOW chapter or this committee through the National Organization for Women at [NOW.org](http://NOW.org).

### **A Call to Action**

Share this newsletter with your Chapters and with other NOW leaders in your state. Research legislation in your state and consider the impact. How can you have an impact on improving your court system, in these manners or others?

Start a local Chapter committee to research and educate others on these issues, hold a focus group or conduct a survey on these issues in your area.

Contact National NOW to reach the Family Law Committee with any questions or to link with other advocates working on these issues.

