



## Winter 2019-2020 – Newsletter of the NOW Foundation Family Law Advisory Committee

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Dear Friends,

The purpose of this 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.

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.

Please see the Call to Action at the end of the Newsletter.

### **General Information**

A clearinghouse of materials the committee has compiled can be found at the NOW Foundation [website](#). There are additional materials at the Chapters only web site on the NOW, Inc. website.

Family Law Advisory Committee Brochure is available [here](#).

### **Developing a Court Watch**

By Renee Beeker

Family Court has become a dangerous place for women and children, especially if abuse is an issue in the case. More and more rulings are being made in empty court rooms with no witnesses except those involved and too often without a court transcript or a recording.

A court watch program usually consists of volunteers attending public court proceedings and tracking items of interest with a goal of improving a variety of court processes.

A court watch program can be a very effective method to improve the judicial system. While a court watch may not affect the outcome of a particular proceeding, an observer's presence in the courtroom can affect the behavior of the officers of the court. This can result in a positive improvement, and may lead to those appearing before the judge receiving more equitable treatment. While the focus of this committee's work is family court, there are other courts that could be served with a court watch to improve justice for the community, so we have included some examples.

Before beginning to plan a court watch, do some research to see if there are other programs currently operating in areas nearby — no need to waste a lot of time for no reason. In your research, you may discover that there may be a court watch to join.

What are the specific issues that brought about the need to develop a court watch?  
What are the end goals?

- Provide support for a litigant or all litigants
- Determine if the law is being followed
- Document a judge's behavior to support a judicial complaint or to prepare for a removal effort
- Check Court for Americans with Disabilities Act (ADA) compliance
- Check Court House for Safety
- Research

To begin a court watch program, first determine what type of cases and in which courts you need to observe. There are many different types of courts, hearing different types of cases.

- Criminal Court
- Domestic Violence Court
- Family Court/Civil
- Probate Court
- Federal Court

After you have determined which courts you would like to observe, you need to decide what information you want to collect. This information will be the start of

developing an instrument to record your observations. There will be a need for the demographic information, such as judge's name, type of case, address of court, date and time, and names of parties involved, along with other possible data.

Examples may be:

- Judicial behavior
- Violence
- Lawyer behavior
- Witness behavior
- Treatment of the litigants
- Due process
- If parties have representation
- Safety
- Access to the Building

One essential need in developing a court watch are volunteers. Who are they, and when can they court watch? The court is in session most often from 8 AM to 4 PM, so it is challenging to have volunteers unless they are not working during court hours. Some possibilities are:

- Senior citizens who still drive
- Junior League
- Political Organizations
- Women's Organizations
- College Students
- Retired Attorneys

Another important part of a court watch is developing volunteer training. This training must be adapted to fit the type of court being watched. It would be important to have some understanding of the items below. There is no need to be a lawyer, just a basic understanding of the below:

- Court Room dress and decorum
- Court Room procedure
- Domestic Violence
- Court Language
- Some Understanding of the Role of Appointees
  - Special Masters, Parent Coordinators, Custody Evaluators, Psychologists

How will the information collected be shared? Are the goals to bring change, report a problem, support a victim?

- Shared in a report to the public
- Report to a Chief Judge
- Shared to a local Domestic Violence Coalition
- Share with the media
- Shared with State Legislators

Court watch programs can be successful in changing the response of the system by sharing concerns, ideas, and suggestions to improve access to justice no matter the court. There is a need for community involvement regarding all courts around the country.

Consider starting a court watch in your community today. For help and direction, please contact this committee via NOW at: [govtrel@now.org](mailto:govtrel@now.org).

## **Inequities in the State of Florida Family Law Practices**

By Adele Guadalupe

The family law courts in Florida march to a different drummer than other courts in the state. Where other courts are given an option for a jury trial, a court recording of the proceedings and, in serious matters, an attorney is appointed to them free of charge, family court does none of these things.

Regardless of domestic violence or child abuse alleged in family court proceedings, none of these constitutional rights are given to parents or their children. Yet persons accused of crimes and other cases heard by the courts are afforded these rights.

Yet children and their parents are not given these same rights even though their access to each other can be disrupted by the courts for long periods of time or forever. The emotional and sometimes physical harm done to these children is often irreparable.

After reading through the "Florida Family Law Legislation of 2019," I found the following information applied to custody decisions as well:

1. Any recordings and/or transcripts in Family Court must be paid for by the litigants.
2. The cost of a jury trial must also be paid for by the litigant who loses the case, if the judge allows a jury trial. It's all up to the judge's discretion.
3. No matter the financial ability of the parent, it is their duty to pay for an attorney to represent them and for all court costs. Legal aid is not available for even the poorest of parents.

There may be some counties that do provide these services, because the chief justice of that county's court believed it necessary. However, in all the custody cases court watchers in Florida have observed, none have reported the availability of these services in family court. Yet many courts advertise that all cases are recorded.

Having lawyers available to these civil litigants and having mandated court room recordings of these hearings/trials made available at a reasonable cost, is of

utmost importance if justice is to be provided to everyone facing civil or family court proceedings, especially those of limited means.

Many misguided decisions are made by family court judges. Most of these arbitrary decisions have irreparable harm to children and their families.

Because there is no legal aid available to these parents, the Family Court System has become a very lucrative arena in the legal system. In highly contested custody cases, after lawyers, paid guardians-ad-litem, evaluators, psychologists, court reporters, transcripts, supervisors, mediators, etc., are involved in a revolving door of fees, most parents, women especially, are left penniless and heart-broken, as are their children and extended families.

Time after time, especially in heavily contested child custody cases, child abusers, child molesters, and domestic violence perpetrators are being given sole custody of their children or unsupervised visitation with them. Sometimes the protective parent is the one who has the occasional supervised visits or no contact at all.

Children are traumatized by the fact that they've not only lost their mothers, but have been forced to live with the abuser. In many of the hearings, evidence of abuse is not even allowed into court. Children, toddlers and even infants are being denied access to loving parents and other members of their families. Due process is being ignored and children are being viewed as property to be divided or awarded.

Many litigants start out with financial means, but quickly run out of resources. This lack of finances has caused many parents to self-represent (pro se). They have nowhere else to turn. Needless to say, a high-powered attorney on the other side makes mincemeat of them and the judges often become annoyed with the pro se litigant's lack of familiarity with courtroom procedures and the law. To make matters worse, when they can no longer afford the court-reporter or transcripts, their rights to appeal become impossible.

In family court and other courts where custody is addressed, electronic recordings should be mandated so that there is a more even playing field. It would definitely have an effect on the abusive manners some judges and attorneys have towards parents who can't afford an attorney or a court reporter.

## DIVORCE INEQUALITY – THE ECONOMIC GAP IN DIVORCE OUTCOMES BETWEEN MEN AND WOMEN

by Michael R. Smalz

Who loses the most in divorce cases? Do men and women suffer equally in a divorce? Does one spouse sometimes end up better off financially after the divorce to the detriment of the other spouse?

Unfortunately, the answer is that the woman – at least financially – usually fares worse than the man. Whether because of gender bias, lack of legal resources, unequal bargaining power, or other factors, women are often treated unfairly in family court.

A [U.S. Government Accountability Office study](#) found that women's household income on average fell 41% after a divorce, which was more than twice as much as men's income fell. Moreover, the poverty rate for separated women is 27%, nearly triple the rate for separated men,<sup>1</sup> and according to an article in the *American Sociological Review*, "The Effect of Marriage and Divorce on Women's Economic Well-Being," women do not completely recover from their financial loss due to divorce until they remarry.

Several factors contribute to the unequal outcomes for men and women in divorce cases. Most divorce settlements and court decrees fail to take into account the diminished future earning potential of women who had primary childcare responsibilities during the marriage.

Since many mothers take at least some time away from work for their careers and on average still earn less than men, they have less earning power than their male partners. Furthermore, when parents get divorced, women usually become the primary caregiver, even under so-called shared parenting or joint custody orders.

A [Boston College Center for Retirement Research study](#) found that being the primary caregiver after divorce reduces a woman's earning power and increases household debts. Child support payments, especially for lower income households, do not significantly close that gap because of low payment levels and weak child support enforcement.

However, the biggest factor contributing to unfair divorce outcomes for women – both financially and loss of child custody – is the disparity in resources between male and female spouses. Divorce proceedings impose a serious – sometimes enormous – financial burden, with the attorney fees and other legal costs of divorce proceedings ranging from less than \$1000 for simple, uncontested

divorces, to more than \$100,000 in highly contested divorces involving children and significant marital assets.

This financial burden places the less well-off spouse – usually the wife – at a great disadvantage in divorce proceedings. They may not be able to hire a skilled and experienced divorce attorney or pay for expert witnesses, guardian ad litem fees and other court costs. Moreover, women who initially hire an attorney in their divorce case sometimes run out of money during their case and their attorney quits before trial or the final divorce settlement.

A fair and just outcome in a divorce case, as in other types of court cases, often depends on how much the parties can afford to pay for “justice.” The unaffordability of quality legal services is a major barrier to justice for many women (and their children) in family court.

Financial barriers to justice in family court are exacerbated by gender bias and judicial lack of understanding of the dynamics of domestic violence, child abuse and child sexual abuse. Judges and magistrates often discount claims of domestic abuse or fail to consider the detrimental impact of domestic violence on the children. Furthermore, phony claims of “parental alienation” – which are all too common in contested child custody cases – may influence the court’s child custody determination.

In the most egregious cases, the judge or magistrate credits claims of “parental alienation syndrome” (PAS) – a long-discredited diagnostic category – and punishes the mother by taking custody away from her and awarding custody to the abusive parent. In other cases, unequal bargaining power between the abuser and the intimidated parent leads to inequitable divorce settlements with the wife, for example, agreeing to a less favorable property distribution or lower spousal/child support payments in exchange for retaining primary custody of the parties’ children.

In short, family court proceedings are often unfair to women and mothers. This unfairness translates into real harm to many women and children.

But the situation is not hopeless. Some state supreme courts have established gender bias task forces that have issued and implemented recommendations to address gender bias in the court system.

Women’s rights organizations, including NOW and other advocates, have fought – sometimes successfully – for changes to family laws, court rules and procedures, and for improved guardian ad litem (GAL) practices, mandatory judicial training, increased legal aid funding, and enhanced services for victims and survivors of domestic violence.

The growing “right to counsel” movement in various states and municipalities is seeking improved access to legal services for “essential” cases, such as housing eviction and child custody cases. Court watch projects, including those organized by Renee Beeker, Chair of the NOW Family Law Advisory Committee, have triggered recommendations for court reforms.

In the meantime, exposing the continuing gender bias in family court practices and outcomes increases the pressure for positive family court reforms.

Please feel free to contact the NOW Family Court Committee for more information regarding family court reforms and efforts to counter gender bias in family courts.

### **A Tribute to Chief Justice Mark Cady**

The National Organization for Women Foundation’s Family Law Committee would like to take this opportunity to pay a brief tribute to an outstanding Iowa Supreme Court Judge, the late Chief Justice Mark Cady. While Mark Cady sadly died suddenly at the age of 66 shortly prior to the 2019 Thanksgiving holiday, his legacy of advocating for justice and equity for all will live on.

The spotlight first shown on Cady after he penned Iowa’s same sex marriage opinion, *Varnum vs. Brien* in 2009, which made it legal for gay couples to marry in the state prior to former President Obama making it legal nationwide. Cady again appeared in the spotlight in 2018 when he led the Iowa Supreme Court to determine that a law requiring women to wait 72 hours before a doctor could perform an abortion was unconstitutional “because autonomy and dominion over one’s body goes to the very heart of what it means to be free.”

However, lesser known important social justice work of Cady involved advocating for specialty courts, such as juvenile courts and family courts, and his consistently fair rulings in custody decisions that always considered the welfare of the children first when he served as a Court of Appeals jurist.

Described by many as a quiet and kind man who worked very hard for equity, Cady advocated tirelessly for more legal aid funding and expressed strong concern for its continued underfunding. He always kept those of us who had trouble gaining equitable access to justice at the forefront of his decision-making. Fairness and equity were Cady’s trademarks.

Cady’s sudden unexpected death was a tragedy not only to his family, but also to the state of justice in Iowa and in our country as a whole. During these divided and hateful rhetoric-filled times, Cady’s voice was one of soft-spoken reason that



loved our constitution and what it was meant to represent. The Des Moines Register (2019) reported that when asked by a law student what it takes to be a good lawyer, Cady responded with, "I find the best course is to be a good person."

Angered by Cady's progressive supreme court leadership, Iowa's current conservative administration recently passed a law that would give the Governor more control over court nominees and would reduce Cady's eight-year term by three years as Chief Justice, as well as reducing his salary. Ever the even-tempered and ethical jurist, Cady recused himself from the contested case of term-reduction for Iowa judges when it came before the court.

NOW's Family Law Committee recognizes Cady as an example of the quality of person needed to provide fairness in our courts and to protect our children. Rest in peace, Mark Cady, and thank you for all that you have done.

### **A Call to Action**

We urge you to form a meaningful Court Watch program in your NOW Chapter, or with another group, if you do not already have one.

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

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<sup>i</sup> Darlena Cunha, "The Divorce Gap," The Atlantic Monthly, April 18, 2016, at <https://www.theatlantic.com/business/archive/2016/04/the-divorce-gap/480333/>