



***Citizen Court Monitoring
Report on
Warren County Family Court

September 2010***

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It is desirable that the trial of causes of action should take place under the public eye, not because the controversies of one citizen with another are of public concern, but because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed.

Justice Oliver Wendell Holmes
Cowley v. Pulsifer
137 Mass. 392, 294 (Mass. 1884)

This court above all others impacts so much on the lives of New Yorkers, the Chief Judge, myself and the administrative board all feel it is very important to make it clear that the court is open to public scrutiny and accountable to the public.

Hon. Jonathan Lippman, Chief Judge of the State of New York
Said while in the position of Chief Administrative Judge about then
Chief Judge Judith Kaye's opening the Family Court to the public in 1998.

EXECUTIVE SUMMARY

The Fund for Modern Courts conducted a Citizen Court Monitoring program in the Warren County Family Court from November 2009 to March 2010. Volunteers were recruited with the help of local organizations, the League of Women Voters, Jeff Stewart, the Executive Director of the Retired and Senior Volunteer Program of Warren and Washington Counties (RSVP) and the New York State United Teachers (NYSUT) Retiree Services for Albany, Saratoga, Rensselaer, Washington, Warren, Essex, Clinton, Franklin, St. Lawrence, Jefferson, and Lewis Counties. Modern Courts provided in-depth training to the volunteer court monitors in order to give them a thorough understanding of Family Court, its importance for families and communities, its jurisdiction, and its daily operations. The monitors used two different questionnaires, prepared by Modern Courts, to guide them through the program – one for monitoring court facilities and one for observing proceedings in court.

Thirteen volunteers observed more than 425 different proceedings held in the courtroom of the Honorable J. Timothy Breen. The cases observed by the monitors included such issues as abuse and neglect of children, family violence, paternity, custody and visitation, support, guardianship, persons in need of supervision (PINS), foster care review and placement, and juvenile delinquency.

Judge Breen, was praised by monitors as a very thorough, patient, and easily understood judge who resolves cases and takes time to clearly explain the background of each case, the reasons for the court appearance and the contents of orders. He asks questions of the parties and gives them an full opportunity to be heard. Monitors remarked on his impartiality, sense of fairness and professionalism on the bench. The following is a summary of the key recommendations based on observations by the court monitors.

- **Courthouse Space, Safety, and Privacy**

Monitors strongly recommend a new, safer facility for the Warren County Family Court. The waiting area and the courtroom are not safe. Though the courtroom security personnel are very helpful and always present, there are no holding cells for prisoners who are brought to the court. Instead, prisoners are kept in a private meeting room (one of two) or in the waiting area with litigants and their family members.

Even without the issue of prisoners using the private rooms, the waiting area is very small and lacks sufficient space for private attorney/client meetings. Another problem is the safety of the judge who must enter the courtroom through the public waiting area and then a narrow hallway. The courtroom is also too small; even with the best efforts of the judge and court officers, litigants are too close to one another to provide each one, especially victims of domestic violence, a sense of safety and a place to discuss their case.

- **Ensure the Court Registry is Updated**

Monitors observed that the use of the Court Registry is an effective means of determining court orders made in other courts but it is not as effective as it needs to be to protect individuals and offer the court sufficient information because it is not being fully updated throughout the court system. Monitors recommend resources be directed on a statewide level to ensure the registry is properly updated.

- **“Upfront” Court Based or Volunteer Assistance**

Monitors recommend that court-based assistance or aid from well-trained volunteers would benefit litigants and the court. Though monitor’s commented that the Clerk’s office is helpful, more “upfront” support for litigants would lead to efficiencies in the court’s time and direct individuals to appropriate community services.

- **More Written Information on Court Procedures and Local Resources**

Monitors recommend that written materials be made available in the waiting areas of the courthouse. Monitors saw this as a missed opportunity. An agreement between the court and community organizations to provide updated materials and information on local resources such as family

support programs, mental health services and domestic violence help would provide the public with important support information and resources.

- **Reduce Delays: Improve Government Agency Coordination**

Monitors observed that a many of delays in resolving cases were caused by the lack of efficiency by the local Department of Social Services. Monitors recommend that the Department of Social Services needs to ensure that their work is timely in order to reduce delays in the consideration of cases, which may result in a negative impact on children and families in crisis.

The Fund for Modern Courts is committed to supporting the implementation of the monitors' recommendations for the Warren County Family Court.

Introduction

The Fund for Modern Courts is an independent, statewide court reform organization committed to improving the judicial system for all New Yorkers. Our Citizen Court Monitoring program, along with our Citizen Jury Project, education and advocacy programs, identifies problems that affect our State's courts and offers information and recommendations about how to make the courts more effective, fair and accessible to all residents of the state. In addition, by building relationships with community members, other advocacy groups, and state and local governments, Modern Courts works with all who want to ensure an independent, diverse and highly qualified judiciary.

Modern Courts wishes to acknowledge the outreach work of the League of Women Voters, Jeff Stewart, the Executive Director of the Retired and Senior Volunteer Program of Warren and Washington Counties (RSVP) and the New York State United Teachers (NYSUT) Retiree Services for Albany, Saratoga, Rensselaer, Washington, Warren, Essex, Clinton, Franklin, St. Lawrence, Jefferson, and Lewis Counties. Each organization provided the program with our volunteer monitors. Modern Courts also wishes to acknowledge the outstanding work of our monitors: Johanna Bak, Philip Cote, Charles Cumming, Joan Elliott, Jeri Kellerman, Bev Kerr, Linda Kirker, Barb McCarthy, Barbara Parks, Ann Schiavone, Vince Schiavone, Helga Schroeter, and Barbara Weinschek.

The comments and findings contained in this report are not to be construed as an endorsement, either implied or express, of any candidate for any office. Any such use is unauthorized by the Fund for Modern Courts.

History of Modern Courts Citizen Court Monitoring

Modern Courts' began court monitoring in 1975. Citizen Court Monitoring is a statewide program that recruits non-lawyer, local volunteers to observe court proceedings in their communities. The monitors' findings and recommendations are published by Modern Courts and released to the public, court administrators, judges, court personnel, government officials, lawmakers, bar associations, civic groups, and the media.

Monitors are local volunteers who look at the courts from an average citizen's viewpoint, thereby providing common-sense perspective on how courts serve the public. During the monitoring project, these volunteers observe proceedings in a particular court for a period of several months, and complete forms designed to help them to evaluate critical aspects of the court's performance, ranging from the judges' management of the court and proceedings to the physical conditions under which the court operates.

Over the past thirty five years, Modern Courts' court monitoring program has been influential in publicizing problems that exist in the courts; urging those responsible for the courts to make improvements, particularly in facilities and court operations; and educating the public about the daily functions and operation of the courts in order to create a constituency of citizens who understand the problems facing the court system and who support efforts to assist the courts to function more efficiently and effectively.

Overall, citizen court monitoring has improved communication between the public and the judiciary, heightened the court system's sensitivity to public needs, and helped to ensure that those needs are met.

This report details the findings of our citizen court monitors regarding the Warren County Family Court.

The Family Court Of New York State

The Family Court of the State of New York was created in 1962 as a specialized court to hear cases involving children and families. Family Court judges handle a range of legal issues, including child abuse and neglect (child protection), adoption, child custody and visitation, domestic violence, guardianship, juvenile delinquency, paternity, persons in need of supervision (PINS), and child support. Family Court judges do not have jurisdiction to hear matrimonial cases or family-related criminal matters, even if a case pertains to a family already before a judge in another context (e.g. domestic violence). There are no jury trials in the Family Court. The Family Court may be a confusing place for people unfamiliar with the court process and the legal issues their problems present.

Family courts are located in each county of the state; in New York City the family courts are part of a citywide Family Court. While Family Court judges may issue orders of protection, additional orders which may be conflicting or inconsistent involving the same family may issue from the Supreme Court or a Criminal Court that is handling another aspect of the

matter. Family Court judges within New York City are appointed for ten-year terms by the Mayor, while Family Court judges outside New York City are elected to office for ten-year terms by the voters of the county in which the judgeship is located.

Judges preside over most Family Court hearings (trials). Support Magistrates hear child or spousal support and paternity cases. In certain larger counties, Court Attorney Referees hear custody, visitation, and foster-care cases and Judicial Hearing Officers (JHOs) hear some adoption and voluntary-placement foster-care cases.

Since 1998, the Family Court has been open to the public and the people, also known as “the parties,” directly involved in a particular case. The judge or support magistrate presiding over each case has the discretion to exclude the public from the courtroom under limited circumstances, if the case involves private issues that would embarrass or harm families and children or for security reasons.

Why Monitor Family Court: The Crisis in Family Court

The Family Court makes decisions on matters relating to children and families, often in crisis. As reported in Modern Courts’ Family Court Task Force Report,¹ Family Court is facing its own ongoing crisis and emergency. It is under resourced and burdened with the highest number of cases in the New York Court System. In 2009, it was reported that Family Court appearances are growing at an annualized rate of 26% and now exceed 2.5 million.² While changing those courts to meet the needs of children and families is a most difficult task, it is a challenge that has to be met, especially in light of the unprecedented negative economic conditions that will most certainly further flood the already inadequate resources of Family Court.³

The array of problems in the Family Court is well-documented. The problems include huge dockets; the failure of the state to create Family Court judgeships commensurate with dockets⁴; unmanageable court calendars⁵; frequent adjournments causing disruption in court proceedings and the effectiveness of judges’ orders; final decision-making sometimes undermined by

¹ “A Call to Action: The Crisis in Family Court: Recommendations for Leadership and Reform,” February 2009, http://www.moderncourts.org/documents/a_call_to_action.pdf

² <http://www.nysenate.gov/files/pdfs/Family%20Court%20Report.pdf>.

³ “A Call to Action: The Crisis in Family Court: Recommendations for Leadership and Reform,” February 2009, http://www.moderncourts.org/documents/a_call_to_action.pdf

⁴ New York City has not received a single new Family Court judgeship in 20 years, and Family Court in some suburban and upstate counties are equally overburdened;

⁵ “A Call to Action: The Crisis in Family Court: Recommendations for Leadership and Reform,” February 2009, http://www.moderncourts.org/documents/a_call_to_action.pdf

the inaction of non-legal components of Family Court matters⁶; the lack of standards for informing all parties, in advance of each court appearance, what proceeding is scheduled to take place resulting in parties often not being properly prepared for court appearances; the lack of legal representation for too many individuals which causes ineffective advocacy and a lack of understanding the consequence of court actions; and the paucity, in many courts throughout the state, of information about how the system works or the provision of support for the parties when they first enter the courtroom resulting in more work for overburdened judges and court personnel.

Legislation providing more judges for Family Court, proposed by Senator John Sampson, Chair of the New York State Senate Judiciary Committee was passed in the Senate in June 2010. But it has not been passed in the Assembly, and therefore has not reached the Governor's desk for signature.

One longstanding proposal, supported by the Fund for Modern Courts, is to restructure the court system as a whole to simplify access and reduce costs. This would enable New York's Unified Court System to provide greater resources for Family Court. This simplification proposal has not had the necessary support of elected officials to make it a reality.

Modern Courts believes one way to help make the public and their representatives aware of the crisis facing Family Court and to shed light on the many problems facing families in Family Court is by observing and monitoring the daily operations in Family Court. Court monitoring also provides community members with an opportunity to view an often neglected aspect of our government - the court system. As this report demonstrates, often monitors who have not been involved in the nuts and bolts of courtroom activities can identify and comment on issues that are unsettling, but commonplace to those who practice in Family Court every day. Monitoring the courts, especially at this time, can provide a perspective on what is important to reform within a particular county.

The need for reform, as reported in the many studies on Family Court by the wide variety of statewide and local government and non-government organizations, is reinforced in the findings from the Family Court Monitors in Warren County.⁷ Even the most effective judge and court personnel cannot overcome the present crisis facing the Family Court.

⁶ *Ibid.*

⁷ See Appendix A of Modern Courts Family Court Task Force Report - http://moderncourts.org/documents/a_call_to_action.pdf; LIFT: <http://www.liftonline.org/>.

OVERVIEW OF WARREN COUNTY FAMILY COURT MONITORING PROJECT

Warren County is situated in the eastern portion of New York State. The County includes the Lake George Area, the City of Glens Falls and surrounding Southern Adirondack towns and villages. As of 2008 the county's approximate population, based upon previous census data, was 65,971. Warren County has one Family Court Judge, the Honorable J. Timothy Breen, who is also an Acting Supreme Court Justice. Judge Breen was elected to the Family Court in 1999 and began his first ten year term in January 2000. He was re-elected to a second ten year term in November 2009. The court is located in the municipal center in Lake George (Town of Queensbury).

The Fund for Modern Courts began its Court Monitoring Program in Warren County in the fall of 2009 and concluded it in March 2010. Volunteers were recruited with the cooperation of the League of Women Voters, Retired and Senior Volunteer Program of Warren and Washington Counties (RSVP), and the New York State United Teachers (NYSUT) Retiree Services for Albany, Saratoga, Rensselaer, Washington, Warren, Essex, Clinton, Franklin, St. Lawrence, Jefferson, and Lewis Counties.

The monitors were community members with a keen dedication to children, families and the court system, and included former teachers, police officers, and foster care volunteers. Each monitor understood the demanding schedule of the program, the difficulty of observing the painful issues of Family Court and the importance of watching what goes on inside the court. The monitors attended an initial orientation session, an all-day training conference, follow-up meetings in person and by conference call, and a final meeting that provided a forum to generate recommendations and highlight particular issues and concerns about the Warren County Family Court.

On November 6, 2009, the orientation for this project was held at the Crandall Public Library in Glens Falls, NY. Members of the League of Women Voters, Retired and Senior Volunteer Program, (RSVP) and the New York State United Teachers (NYSUT) attended, for a total of 30 people. The orientation provided volunteers with an overview of the project.

Subsequently in-depth training for the program was conducted on November 18, 2009 at Crandall Library for 22 volunteers. Denise Kronstadt, Deputy Executive Director and Director of Advocacy for Modern Courts led the training session. Training provided the monitors with a thorough understanding of the Family Court, and a step-by-step review of the questionnaires used to monitor the facilities, the courtroom and proceedings. Monitors also received the Modern Courts' Guide to the New York State Family Court handbooks as well as general instructions on court procedure.

The training also included a presentation by Joanna Davis, Staff Attorney at the Legal Aid Society of Northeastern New York. Ms. Davis shared her experience in Family Court and explained what monitors could expect to observe while monitoring the Warren County Family Court. She discussed the types of cases and the people who are in the court room including the role of attorneys, advocates, the County Attorneys, lawyers for children, Probation and other key government officials and agencies. She also gave an overview on domestic violence proceedings. The monitors began their visits immediately following the training and contact with the monitors was maintained by regular phone calls and in person meetings with the Director of Court Monitoring, Constance Lynch. Modern Courts also held an additional mid-program meeting with monitors to review issues and concerns.

The monitors used two different questionnaires to guide them through the program – one for court facilities and one for the proceedings they would observe. Each form asks specific questions and provides the monitors with space to make their own observations.

The General Monitoring Form sought information on courtroom facilities, safety and security, maintenance, access to information, the availability of assistance for litigants, and, accessibility. The Case Monitoring Form sought information on individual cases including the type of proceedings, who appeared in court, how the judge managed the cases, whether the judge carefully explained the history and facts of the case, if litigants were allowed to ask questions, whether the judge fully explained the proceedings in an understandable manner, whether the judge offered clear instruction on orders, whether the case was adjourned or resolved, whether children in juvenile delinquency proceedings were clearly explained their rights, whether Court personnel were helpful and courteous, and provided many more questions on domestic violence, children, the role of attorneys and security. ¹¹

¹¹ The monitoring forms can be viewed at <http://www.moderncourts.org/Programs/monitoring.html> and at the end of this report.

Thirteen volunteers observed the Family Court in Warren County. They monitored the court for four months from November 2009 through March 2010. The monitors observed more than 237 cases. Because each Family Court case may include more than one type of legal proceeding, the monitors observed more than 425 different proceedings within the 237 cases. At least 132 of the cases included a petition (or petitions) for custody and visitation.

The cases observed by the monitors included such issues as abuse and neglect of children, family violence, paternity, custody and visitation, support, guardianship, persons in need of supervision (PINS), foster care review and placement, and juvenile delinquency.

The monitors also observed petitioners and respondents in court, family members attending proceedings, children subject to PINS and juvenile delinquency proceedings, parents being brought to court from jail or prison in shackles, attorneys for both sides, lawyers for children, county attorneys and the attorneys and representatives for the Department of Social Services (Child Protective Services), probation officers, and foster care providers. Advocates for victims of domestic violence may have been in the court but the monitors did not note their appearance because they did not present cases before the judge.

MONITORS' COMMENTS AND OBSERVATIONS

- **The serious and complex nature of Family Court cases is reflected in the following comments:**

Six people [are] requesting custody of two year old boy. Young father in treatment for drug and alcohol. Young mother had been in a car accident and is in physical rehabilitation. Both parents [are] drug and alcohol abuser. The Judge previously ordered treatment. Maternal and paternal grandparents have custody. If parents want to see child they must communicate with grandparents who currently have child.

PINS proceedings. Teen requests actions of neglect against mother –[claiming] his medication was not properly being provided. Did not seek counseling for son. She wouldn't get school work to him in detention. Wouldn't bring him clothes. Multiple threats to desert him.

Foster parent will be able to adopt child. Already adopted a sibling.

This is a case that had a happy result. 16 year old female, one of four children, who have all been adopted. Mother rights' voided due to neglect. 16 year old is doing very well in school, foster care and her personal life. Judge pleased with

progress and order "4 months hearing" to determine permanency. This case was a chance to have positive DSS, court, foster parents, and a good result for a change.

This is a very sad case where neither parent wants the child.

Special needs child; BOCES pre-school; re-integrate father with son. Judge approved a temporary custody order for visitation. No drugs or alcohol allowed. Judge stressed consistency in parenting.

Sad case [of a] 17 year old girl runaway working as a prostitute. Has attempted suicide. DSS want inpatient substance abuse treatment. Judge ordered medical treatment, DSS supervision and foster care. She turns 18 in April and may just walk away.

There were claims of child abuse that were reportedly filed in a previous court proceeding which did not show up on the computerized state registry. The judge explained that this occurs too frequently because of antiquated computer systems, poorly trained personnel and sloppy handling in some court jurisdictions.

Judge explained that the child age 14 has severe mental and physical disabilities. Parents seemed sincere and have done everything to help this child. Bureaucratic red tape has kept DSS involved and the court reserved decision.

Father- unemployed. Mother- unemployed. Mother wants full custody- . . . Background check shows father has old orders of another child- CPS involved neglect.

Convolutd case-modification of protective order-war vet, substance abuser in treatment and making progress. Child involved is 1 year old. The mother is also in treatment and counseling with Catholic Charities. DSS does not want order modified. The events leading up to this were serious and very dangerous. This is a very difficult case and has a lot of aspects - the judge has difficult issues to deal with.

Mental health of the father is in question. Mother [was] seeking to limit parenting time. Father [was] looking for time with children. Father [is] on probation for assault.

- **Monitors most serious concerns about the Warren County Family Court are reflected in the following comments:**

The lack of adequate facilities and space was glaring.

The facilities . . . were horrible there. The courtroom itself is not too bad but it is very small. . . People who were . . . petitioners or respondents had to sit away from tables, because there just wasn't enough room for everybody [involved] in some cases.

While the court is clean & well maintained, the waiting area is too small and gets crowded very quickly. It is potentially dangerous since opposing parties are cramped into a small space. Children's play area is right in this waiting space, making it more crowded.

Entrance to courtroom is through a very narrow hallway . . . Process seems smooth but could benefit from more space.

The Family Court does not have a secure area to retain prisoners. Prisoners are escorted by a guard, detained in a conference room, (one of two) available. Conference room is not suitable for prisoners. Prisoners are shackled and escorted but have close proximity to the court, staff, public, and anyone in this very congested area.

Waiting areas were so crowded that seating was unavailable for several people. More secure areas needed.

More space for client/attorney interviews [are needed]. Conversations with their clients are not confidential, all can hear in the overcrowded waiting area.

Judge reviews court registry in every case, but found that in several instances other courts had failed to send their case dispositions to the registry.

- **Monitors observations of Judge Breen are reflected in the following comments:**

Judge Breen is very thorough, easily understood and very patient. Wants to resolve cases and takes time to be impartial and fair. Court Personnel are alert, efficient and professional.

This case was handled quickly by the court; the judge assisted both parties in developing a reasonable solution.

Judge Breen uses his court attorney to conference cases. She seems to resolve an awful lot of [cases] freeing the [calendar] and moving cases along.

Judge was very clear, efficient! Case involved an out of state father on the phone.

He is definitely [oriented] to keep families together, to find ways to help kids long-term in their lives. . .Mandating parenting classes many times, and just overall I was very impressed with the way he conducted [his courtroom].

Judge welcomes all parties and treats all with respect. He fully explains and advises.

- **The monitors also remarked on the following issues:**

Lack of attorneys (in more than 42% of the cases either the respondent or the petitioner did not have counsel during an appearance).

The poor quality of preparedness of the Warren County Department of Social Services.

Inability to coordinate other court proceedings (e.g. drug court or a divorce proceeding).

Court's inability to enforce or modify order of protection of another court.

Delay in issuing necessary governmental (agency) reports.

Lack of full efficiency of the criminal registry.

Respondents' failure to appear.

Disputes over visitation.

Lack of supervision for visitation.

RECOMMENDATIONS:

As a result of the observations made by the monitors, the Fund for Modern Courts makes the following recommendations regarding the Family Court in Warren County:

COURT BASED OR VOLUNTEER ASSISTANCE

The monitors recommend and Modern Courts agrees that the court and the litigants would benefit from a program allowing the court system or well-trained volunteers to assist litigants in filling out petitions, answering questions about the court process and offering information on community and governmental support services. This type of help does not exist in the court. Although it was noted that the Clerk's office was helpful to litigants, Clerks cannot offer legal advice and do not give supportive information. One monitor observed that the Clerk's office offered information on mediation services. The monitors believed the more "upfront" support for litigants, the better the opportunities to utilize the court's time more efficiently and direct people to appropriate community-based services.

INFORMATION PROVIDED

The monitors recommend and Modern Courts agrees that in addition to providing volunteer assistance at the Clerk's office, more pamphlets, brochures and other written materials in the waiting area that are pertinent to the needs of people who come to court should be provided. Monitors saw this as a missed opportunity. There should be an agreement between the court and community organizations to provide updated materials including information on local resources, such as family support programs, domestic violence help, mental health services, substance abuse counseling and parenting education materials.

In the April 2009 report – *A Call to Action: The Crisis in Family Court: Recommendations for Leadership and Reform*¹³ – the Fund for Modern Courts' Task Force on Family Court expressed its concern about the obstacles to access to justice for families in Family Court and called for the development of an array of additional resources to permit unrepresented litigants to fully protect their rights and obtain substantial justice in the daunting legal and procedural system of Family Court

¹³ www.moderncourts.org

In that report, Modern Courts made specific recommendations which are consistent with the observations and recommendations of the monitors in Warren County. Those recommendations included:

- Establishing and supporting in every county “help centers” that are staffed by knowledgeable and informed individuals and equipped with relevant print and electronic resources.
- Making widely available instruction guides on how to prepare court submissions.
- Expanding and improving upon the technological capability of the courts, including providing computer terminals in courthouses, so that litigants can prepare petitions.
- Providing better web access so that forms and templates can be completed online and electronically filed.
- Extending Family Justice Centers for domestic violence survivors throughout the state.
- Devoting resources to recruiting, supporting and collaborating with a dedicated *pro bono* counsel panel.

COURTHOUSE SPACE, SAFETY AND SECURITY

As it exists today, the courthouse does not meet the demands of an ever expanding caseload. Warren County needs a larger and more secure Family Court so it can provide a suitable facility for court personnel, litigants and their families, government representatives, attorneys and the public.

- **WAITING AREA SAFETY AND PRIVACY:** The monitors raised grave concerns regarding the lack of sufficient private meeting areas adjacent to the courtroom and the lack of holding cells for prisoners. Because no holding cell exists in the courtroom facility, prisoners were either held in the private meeting rooms or in the waiting area. On those occasions, parties and their attorneys could not use the meeting rooms, and were left to openly discuss cases in front of everyone in the waiting area. Although there may be enough seating 50% of the time (see chart below) – the waiting area was viewed as potentially dangerous place and without privacy.
- **COURTROOM SAFETY:** The court is very small and the judge must enter the courtroom through the waiting area and then a narrow hallway. Although the security personnel are good and present at all times, monitors conveyed that dangerous encounters could occur that would affect litigants, family members, or court personnel due to these tight quarters.

COURT REGISTRY: It was observed that the practice of using the court registry is very effective but the registry itself is not fully updated. It is recommended that resources are directed on a statewide level to ensure proper input of information and coordination of the registry.

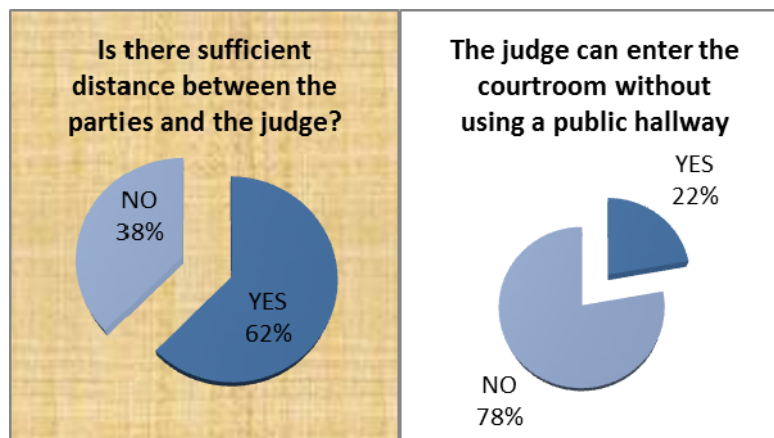
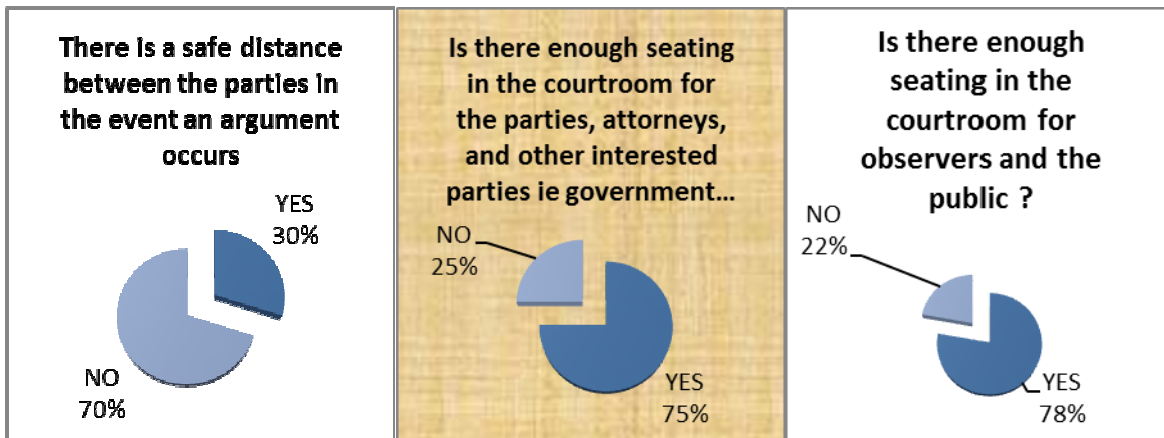
BETTER GOVERNMENT AGENCY COORDINATION: It was observed that a great deal of delay was caused by the lack of efficiency on the part of the local Department of Social Services. This government agency needs to ensure that the work it does is timely and does not create delays in court proceedings which can have a profound impact on children and families in crisis.

CHARTS AND SPECIFIC OBSERVATIONS

As noted above, the Monitors raised particular concerns and made certain specific recommendations based upon their observations. The charts and summaries below document those observations made by the monitors on the Family Court Monitoring Form and Case Monitoring Form.

Information from the Family Court General Monitoring Form

Inside the Courtroom: Space, Facilities and Safety



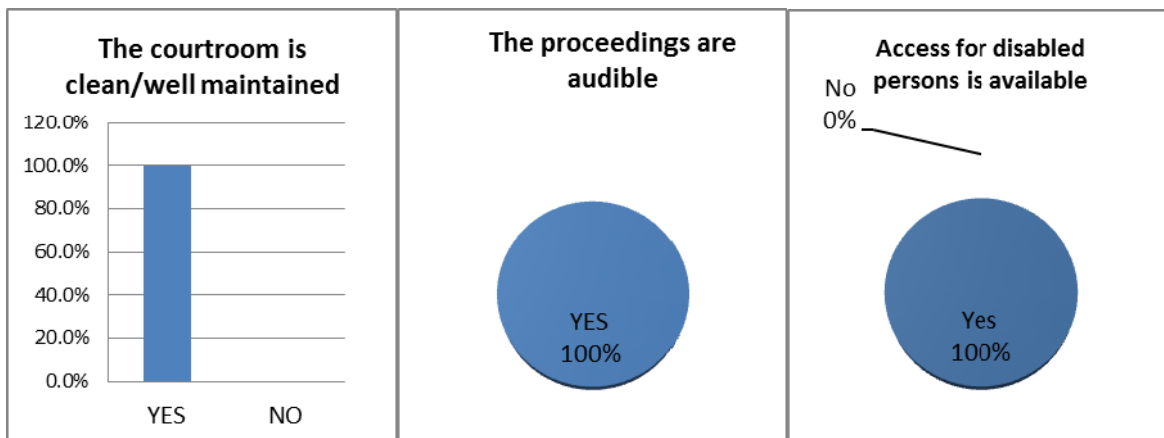
The monitors observed a well-organized, thorough Judge who utilized his staff fully and appropriately to help litigants and maintained a steady flow of cases as best as possible considering the ever increasing filings. The monitors also observed, however, a terribly cramped outdated court room where opposing parties sat too closely to one another. Although there is enough seating for people whose case is actively being heard, the room lacks security and ample room for additional family members and the public.

The monitors observed that Judge Breen cannot enter the courtroom without using the public hallway posing a security risk to the judge. The majority of monitors noted, in order for Judge Breen to get to his courtroom in the morning or after lunch, he must go through the public area.

The majority of monitors observed that the distance between the parties and the judge is not safe. A majority of the monitors also observed that the parties are not at a safe distance from one another in the event an argument occurs.

While the courtroom is aesthetically pleasing, it is too small. If there are many individuals in the courtroom, there is barely space. While Judge is elevated, the room does not provide particularly good security.

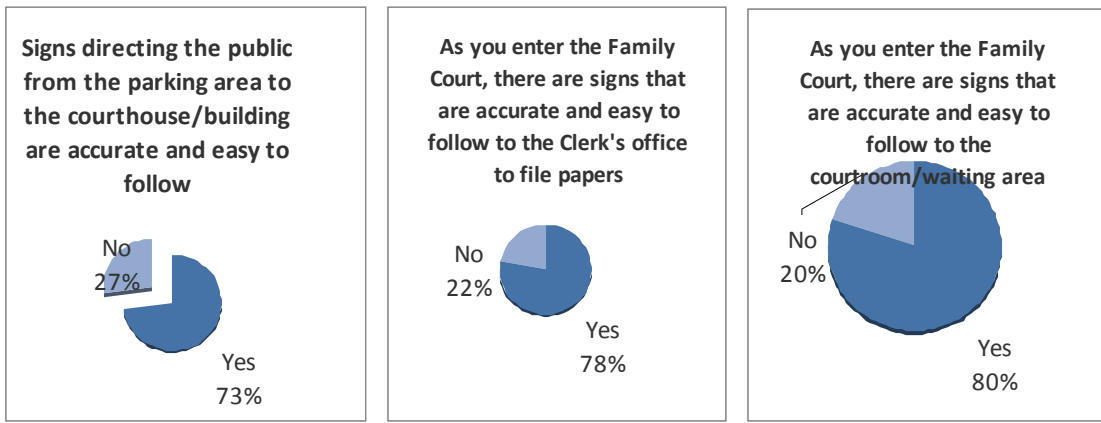
On a positive note – all monitors found that the courtroom was clean and well maintained the proceedings audible and that the facilities were accessible for disabled persons.



Access to the Courthouse Building, Courtroom and Clerk's Office

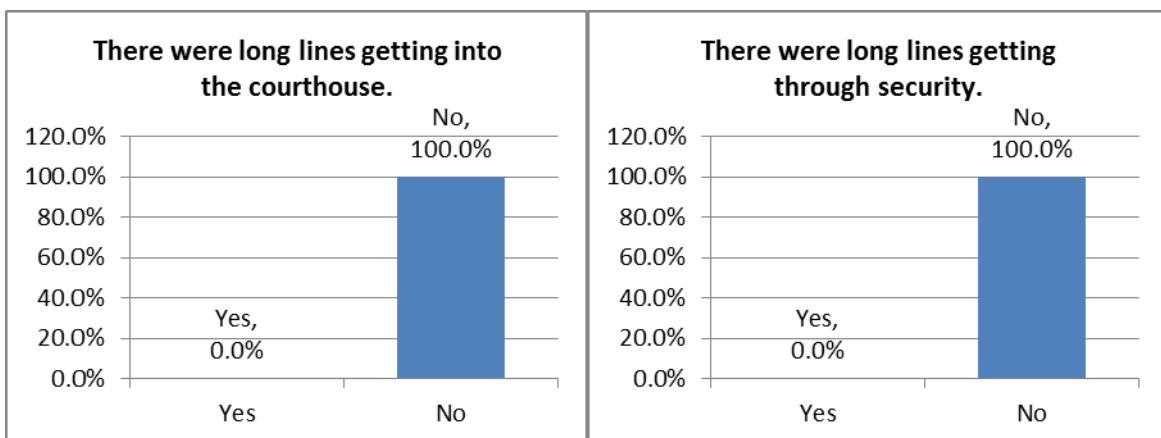
Signage

- While it is clear from the charts below that signage from outside and within the courthouse is accurate and easy to follow, monitors reported that there is insufficient signage for both the visually impaired and for those who do not read English.



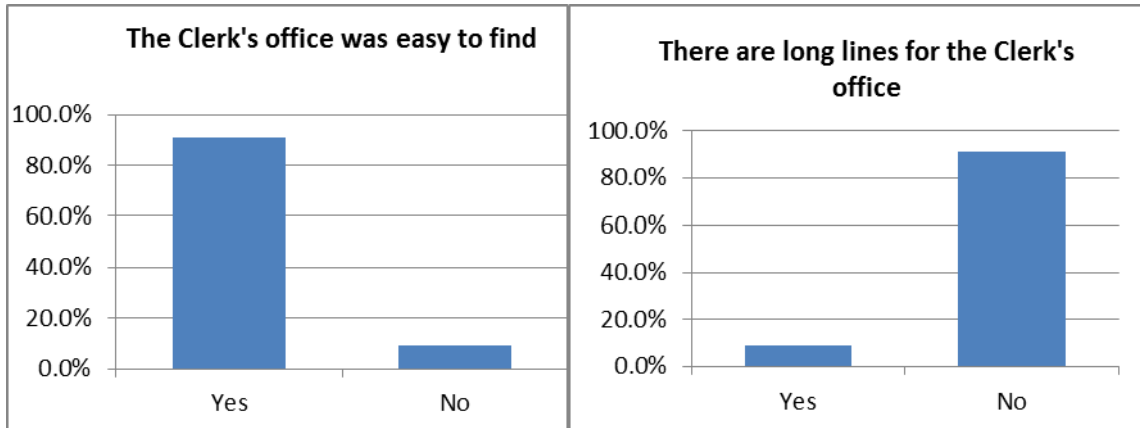
- Waiting to Enter the Courthouse and Pass Through Security**

All of the monitors reported that there were neither delays at the entrance to the courthouse or going through security at the courthouse.



- **Clerk’s Office**

The Clerks’ office was accessible.



- **Waiting Area to Courtroom**

One monitor observed, *“While the court is clean and well maintained, the waiting area is too small and gets crowded very quickly. It is potentially dangerous since opposing parties are cramped into small space.”*

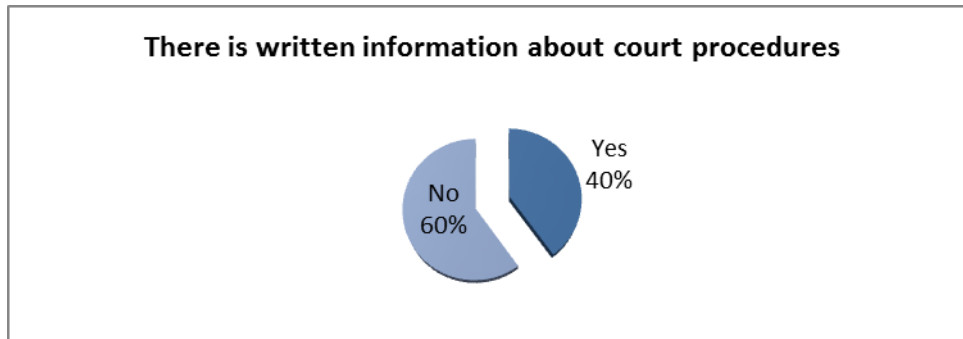
- **Space/Maintenance/Security/Privacy:**

Monitors observed that Warren County does not have a separate childcare room. There is an area in the waiting area with toys. But the monitors commented that the play area was *“the size of a desk.”* The monitors observed that the waiting area is well maintained. The monitors also observed that the waiting area is just too small.



- **Information Provided**

Although the chart below demonstrates that materials are available, it was the quality and usefulness of the materials that was lacking.



Information from the Family Court Case Monitoring Form

Overall Courtroom Management/Professionalism

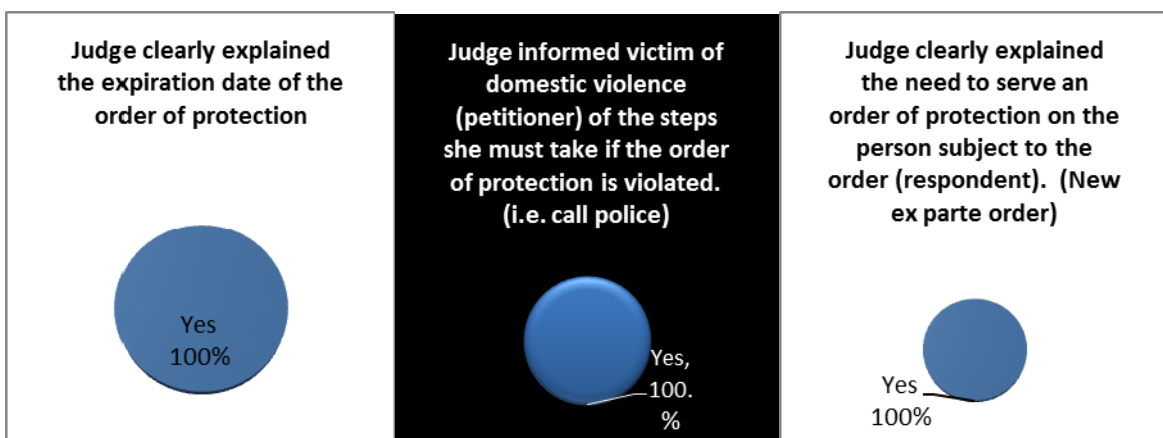
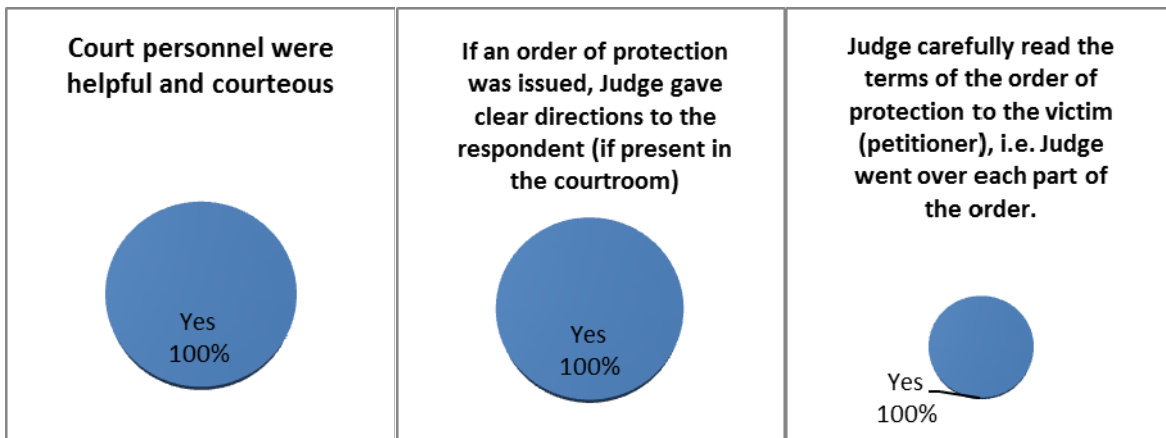
The monitors observed that Judge Breen was “firm and spelled out instructions clearly.” It was clearly apparent to the monitors that the litigants were provided a thorough review of the proceedings, understood what was expected of them and had an opportunity to ask questions of the judge.

In responding to specific questions on the monitoring form, in every case observed (100% of the time) Judge Breen:

- waited for the parties and their attorneys to be seated before he began the case;
- had each party and their attorney, if any, provide their names and relationship to the case;
- began the proceedings by clearly reviewing a brief history of the case;
- began the proceedings by clearly presenting the specific issues before him on that day;
- fully explained the proceedings in an understandable manner;
- clearly read/explained the charges to the parties;

- spoke in “plain English” made the proceedings easy to follow while being thorough;
- informed parties of right to an attorney and how to obtain assistance;
- gave each party an opportunity to speak;
- asked each party if they had any questions;
- answered the questions presented by the parties or attorneys; and
- went over settlement or order carefully with parties.

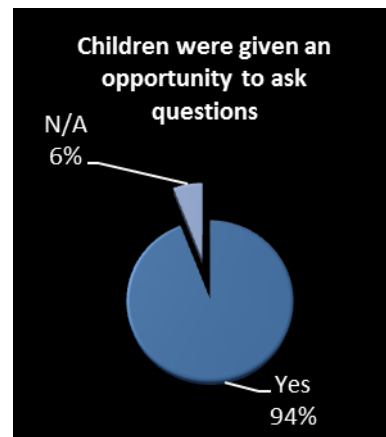
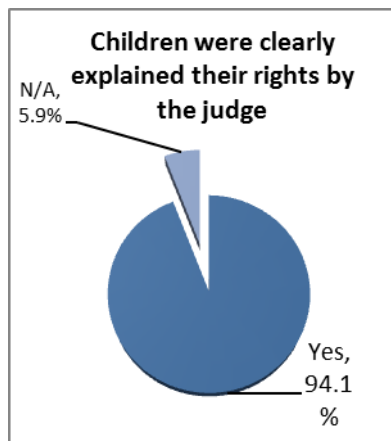
The monitors also made note of the following:



Children

Children as Respondents: Juvenile Delinquency/PINS: Monitors observed juvenile delinquency proceedings and PINS proceedings. During those proceedings the monitors observed the Judge going over the details of the case with the child. Although many cases were quite sad, one case provided a positive view, as a child formerly a respondent in a juvenile delinquency proceedings had followed up on prior orders and was going to college. “The court was tying up all the loose ends of what had been a really bad situation that had been going on for several years. . .the judge was visibly moved by that, he had a grin from ear to ear.”

The monitors noted how important it was to be able to watch the juvenile delinquency proceeding so that they could gather information on how the court deals with children in trouble.

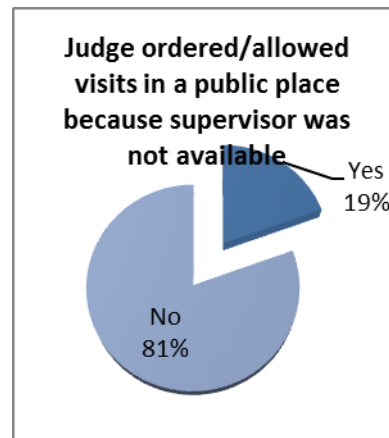
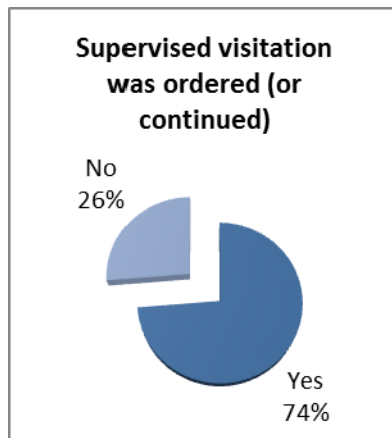


Children Not in Courtroom: Abuse and Neglect/Termination of Parental Rights: The monitors observed the court as it handled the difficult issues of abuse and neglect and termination of parental rights. Children were not in the courtroom for these proceedings. Monitors expressed frustration with the work of the Department of Social Services (DSS). The monitors observed the judge deciding matters of custody, order parenting classes, direct litigants to substance abuse and mental health programs and he would terminate their rights when proof established it necessary. The monitors overall impression of the lawyers for children (law guardians) was good. Most were viewed as well prepared except for occasional instance where a law guardian had not yet met the child. In one matter the Judge ordered a Law Guardian to talk to the DSS case worker. ¹⁴

¹⁴ The monitoring program did not provide for questions on individual lawyers. The impressions are broad-based.

Custody and Visitation: The monitors remarked on supervised visitation orders. The inclusion of this question in the monitoring form resulted from recent concerns concerning the lack of supportive family members and/or agencies to help provide supervised visitation in appropriate settings. In the 57 cases where the issue was observed, 42 (or 74%) supervised visitation was ordered.

There were 8 cases (19%) where the observers found that the judge allowed visitation to take place in a public place when no supervisors were available.



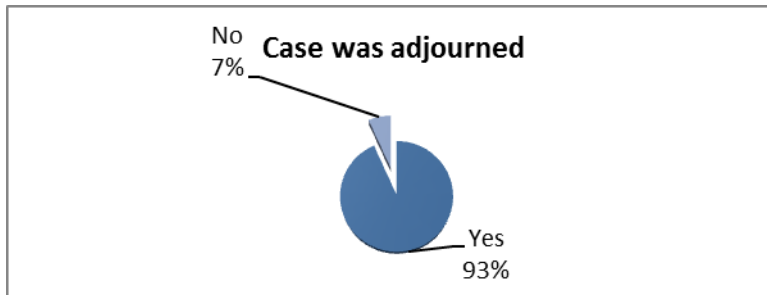
Adjournments

Adjournments are a persistent problem in Family Court throughout New York State.¹⁵ As the chart below indicates, a large percentage of cases are adjourned. The monitors observed that Judge Breen utilizes his court attorney to ensure the resolution of many matters. Monitors noted that adjournments in Warren County often result from the number and nature of the proceedings not because of the actions of the Judge, but for a variety of other reasons, including:

- incarcerated fathers were not available by telephone;
- respondents failure to appear on orders of protection;
- court ordered home study delayed for two months;
- paternity in question, judge ordered DNA testing;
- law guardian had not meet with the children;
- the Department of Social Services failed to provide information; and
- petitioner was unrepresented; the judge assigned an attorney.

¹⁵ See Modern Courts' Family Court Task Force Report: http://www.moderncourts.org/documents/a_call_to_action.pdf

Monitors also commented that Judge Breen often brings matters to a resolution whenever he is able. For example in a number of visitation conflicts, the monitors observed the judge clearly working out the details to move the case along in the best interest of the children, requiring government representatives to provide needed reports in a timely manner, completing permanency planning cases, and always doing everything to advance a case and not allow it to sit without some kind of action or follow up. Judge Breen did have trials when a case could not be resolved by settlement.



Conclusion

The monitors in Warren County, many of whom formerly worked with children and families remarked that monitoring gave them a deeper appreciation of the complexity of the court system and the troubling problems families face. Although the monitors were well informed community members before they began monitoring, none had viewed the courts through the prism of a structured program designed to provide them and the public with a view of the daily workings of Family Court.

As former Chief Judge Kaye said in 1998 when she opened up the Family Court, "It is vital that the public have a good understanding of the court and confidence in the court process."

Modern Courts believes that the monitors offered important recommendations based upon their observations, were able to better understand the court they observed, and it is our hope that they and the readers of this report will advocate for needed improvements.

Appendix:
Monitoring Forms



Family Court General Monitoring Form		
Monitor's Name:	Court Observed:	
Date Observed:		
Access to the Courthouse Building, Courtroom and Clerk's Office		Notes
SIGNS		
1. Signs directing the public from the parking area to the courthouse/building are accurate and easy to follow	Yes	No
2. As you enter the Family Court, there are signs that are accurate and easy to follow	Yes	No
a. To the Clerk's Office (to file papers)	Yes	No
b. To the courtroom/waiting area	Yes	No
3. Signs are multi-lingual/in Braille	Yes	No
LINES		
4. There are long lines getting into the courthouse	Yes	No
5. There are long lines getting through security	Yes	No
CLERK'S OFFICE (place for public to fill out/file petitions)		
6. The Clerk's office was easy to find	Yes	No
7. There are long lines for the clerk's office	Yes	No
8. There was help available to assist people in filling out petitions	Yes	No

Waiting Area to Courtroom				Notes
SPACE				
9. There is enough seating in the waiting area	Yes	No		
10. There a separate area especially for children	Yes	No		
11. There is a separate room with childcare	Yes	No		
MAINTENANCE				
12. The waiting area is clean/well-maintained	Yes	No		
13. The waiting area is quiet and orderly	Yes	No		
INFORMATION PROVIDED				
14. There is written information/brochures for the public	Yes	No		
15. The written information/brochures are multi-lingual	Yes	No		
16. There is written information about court procedures	Yes	No		
SAFETY AND SECURITY				
17. Court Officers are present in the waiting area at all times	Yes	No		
18. Safety precautions were offered to victims of domestic violence	Yes	No		
ATTORNEY/CLIENT				
19. Separate space/room is available for <u>private</u> client-attorney conferencing	Yes	No		
General Conditions				
20. Restrooms are clean/well maintained	Yes	No		
21. Water fountains work properly	Yes	No		
22. Access for disabled persons is available	Yes	No		
Inside the Courtroom: Space/Facilities/Safety				
23. There is enough seating in the courtroom	Yes	No		
a. For the parties, attorneys, and other interested parties (government representatives)	Yes	No		
b. For observers and the public	Yes	No		
24. The court room provides sufficient space for the clerks, court officers, and judge	Yes	No		
25. The courtroom is clean/well maintained	Yes	No		



THE FUND FOR MODERN COURTS CASE MONITORING FORM

Please indicate which proceedings were included in the case observed (there is often more than one type of proceedings)

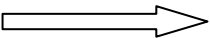
- Termination of Parental Rights
- Juvenile Delinquency
- Support
- Foster Care Review
- Neglect and Abuse
- Family Offense
- Persons in Need of Supervision
- Custody and Visitation
- Other _____

Please indicate (as best as possible) who appeared before the court on the proceedings

- Petitioner
- Respondent(s) Children Family members
- Attorney for Petitioner Attorney for Respondent(s)
- Law Guardian(s) (Lawyer for Children)
- Advocate for Domestic Violence Victim
- Government Officials
 - County Attorney Attorney for Department of Social Services
 - Department of Social Services Child Protective Services
 - Probation Foster care
- Other _____

Overall Courtroom Management/Professionalism	Notes	
	Yes	No
1. Judge waited for the parties and their attorneys to be seated before he/she began the case.	Yes	No
2. Judge had each party and their attorney(s), if any, provide their names and relationship to the case.	Yes	No
3. Judge began the proceedings by clearly reviewing a brief history of the case.	Yes	No
4. Judge began the proceedings by clearly presenting the specific issues before him/her on that day.	Yes	No
5. Judge fully explained the proceedings in an understandable manner.	Yes	No
6. Judge clearly read/expained the charges to the parties.	Yes	No
7. Judge spoke in "plain English" i.e. made the proceedings easy to follow while being thorough.	Yes	No
8. Judge informed parties of their right to an attorney and how to obtain assistance (limited cases).	Yes	No
9. Judge gave each party an opportunity to speak.	Yes	No
10. Judge asked each party if they had any questions.	Yes	No
11. Judge answered the questions presented by parties and/or attorney.	Yes	No

Overall Courtroom Management/Professionalism (continued)			
12. Judge went over the settlement or order carefully with the parties.	Yes	No	
13. Case was adjourned.	Yes	No	
14. Court personnel were helpful and courteous.	Yes	No	
15. Court officer was present in the courtroom.	Yes	No	
Children: Juvenile Delinquency/PINS			
16. Children were represented by an attorney.	Yes	No	
17. Children were clearly explained their rights by the judge.	Yes	No	
18. Children were given an opportunity to ask questions.	Yes	No	
Children: Custody/Visitation/Abuse and Neglect			
19. Children were in the courtroom.	Yes	No	
20. Supervised visitation was ordered (or continued).	Yes	No	
21. Judge ordered/allowed visits in a public place because supervisor was not available.	Yes	No	
22. Judge asked children questions in open court	Yes	No	
Domestic Violence (Family Offenses)			
Please Note: "Petitioner" is the victim of domestic violence – "Respondent" is the alleged batterer. Sometimes <u>only</u> the victim is in the court – this is usually the case when the matter is on for the first time on an <i>ex parte</i> order of protection. A domestic violence matter (O) can also be part of other proceedings.			
23. Judge seemed to treat the parties equally.	Yes	No	
24. Judge tried to persuade/convince parties to settle the domestic violence case.	Yes	No	
25. If an order of protection was issued, judge gave clear directions to the respondent (if present in the court room).	Yes	No	
26. Judge carefully read the terms of the order of protection to the victim (petitioner), i.e. judge went over each part of the order.	Yes	No	
27. Judge clearly explained the expiration date of the order of protection.	Yes	No	
28. Judge clearly explained the need to serve an order of protection on the person subject to the order (respondent). (New <i>ex parte</i> order)	Yes	No	
29. Judge informed victim of domestic violence (petitioner) of the steps she must take if the order of protection is violated. (i.e. call police)	Yes	No	
30. Judge issued Orders of Protection to both parties.	Yes	No	
31. Judge took the issue of domestic violence seriously into account when determining all the proceedings before him/her.	Yes	No	
32. Judge informed victim about resources for assistance with domestic violence.	Yes	No	



PLEASE FILL IN:
Name of Monitor
Date Observed

Court
Form No.

Domestic Violence (Family Offenses)		Discussed	Ordered
Please check box that applies, if any			
33. Mediation.			
34. Family or Marital Counseling.			
35. Substance Abuse Treatment			
36. Mental Health Treatment.			
37. Counseling or treatment of the victim.			
ATTORNEYS AND LAW GUARDIANS (LAWYER FOR CHILDREN)		Comment	
38. Please comment on any particular issues/concerns/questions you may have had with the representation of any party in the case. Please indicate, as best as possible, without listing any names, which representative you are discussing:			
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GOVERNMENT ATTORNEYS AND REPRESENTATIVES		Comment	
39. Please comment on any particular issues/concerns/questions you may have had with government worker or representative (attorney). Please indicate, as best as possible, without listing any names, which agency you are discussing:			
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GENERAL COMMENTS		Comment	
40. Please Comment on any aspect of the case, court room activity, case management, this is an open space for your comments:			
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Please continue with your comments on the next page:			



All Modern Courts' publications including court monitoring reports and advocacy programs can be found on our website: www.moderncourts.org.

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