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COMMENTARY

## Addressing the Challenges of Poverty and Unrepresented Litigants in the Family Court

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Court Administration

By Julio Mendez | February 09, 2024 at 11:00 AM



Issues of poverty and unrepresented litigants present immense challenges to the family court and its judges.

A report issued in 2019 by New Jersey Legal Services provides a sobering perspective. Federal statistics put the state's poverty rate at about 10%. New Jersey Legal Services points out that if standards were based on what it cost to live in New Jersey, one-third or 2.9 million New Jersey residents experience what it called "true poverty."

Family court cases are greatly impacted by litigants' lack of stable housing, unemployment and lack of transportation. The challenge for poor litigants is compounded by lack of legal representation.

According to the National Center for State Courts, most family law cases involve at least one self-represented party. Eight of 10 cases in some family dockets have unrepresented litigants.

The legal system is complex, lawyer-centered and difficult to navigate. Asking an unrepresented litigant to understand court rules, legal standards, statutory factors, court precedent, cross examination and rules of evidence is simply asking too much.

Coming into the courthouse is also intimidating. Just imagine a victim of domestic violence in a courtroom, without a lawyer, next to the person they are fearful of. What about in a case that may result in losing custody of children?

A 2016 report on experiences of self-representation in U.S. family court prepared by the University of Denver reported that the main reason given for self-representation by nine of 10 litigants is lack of money. It's not a choice to self-represent.

A December 2023 survey by the National Center for State Courts found that more than half of respondents believed that state courts do not provide equal justice under the law. The level of distrust is troubling; and it is even greater among minority respondents.

These issues present enormous challenges to the court system and family court judges. New Jersey family courts processed 200,000 cases in the court year ending June 30, 2023. The highest filings were in the FD non-dissolution docket with 75,000. The next two highest docket filings were in the domestic violence FV docket with 52,000 cases, and the FM matrimonial docket with 43,000 cases.

These three dockets represent 85% of total filings. Particularly in the FD Docket, nine of 10 litigants appear in court without a lawyer.

Judges are the gatekeepers of justice and they set the tone in the courtroom. It begins with treating everyone with dignity and respect and ensuring that everyone gets their day in court.

Addressing these challenges requires judges, court staff and lawyers to understand the socio-economic and cultural factors impacting families coming before the court.

Importantly, training to address and understand the needs of poor and unrepresented litigants for judges, court staff and lawyers is essential. Of paramount importance is to recognize that poverty does not equal neglect.

Family judges must have empathy, patience, impartiality and a caring understanding of the needs of the family. They must take time to carefully explain decisions and court process.

Establishing collaborative connections with social services and community organizations to provide a comprehensive support system of services for families is crucial to achieve positive outcomes.

There is a social work element for the family court judges and the courts. It goes well beyond the traditional role of the court of just disposition of cases.

New Jersey courts are constantly establishing ways to expand access to justice. Coming into family courts, you will find self-help centers that provide unrepresented litigants with legal information and standardized forms. Forms and information are also available online.

Using plain language in all forms and communication is crucial.

The New Jersey Judiciary has an ombudsman in every vicinage to assist litigants. Each courthouse now has litigant service centers staffed to guide unrepresented litigants, providing forms, updating the status on cases and explaining court process. The centers even provide access to technology that many poor litigants do not have.

The New Jersey judiciary language access initiatives provide access to justice for court users with limited English proficiency; and accommodations for court users with disabilities.

The family judge is the central player for achieving access to justice. This is a hard and intense daily job performed by many dedicated judges in every courthouse in the state. The most important work in the courthouse takes place in the family court.

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