

Court Consolidation and Divorce: ‘Difficult Path Ahead ... But Change Must Come’

In his Divorce Law column, Alton L. Abramowitz discusses the proposed court consolidation in the context of family law, writing that "the key to unlocking the resolution of family law disputes on a cooperative basis among parents and spouses, outside of the forum of contested litigation, can be found in a consolidated court system."

By **Alton L. Abramowitz** | February 27, 2020



On Sept. 25, 2019, New York’s Chief Judge Janet DiFiore promulgated proposed amendments to our state’s constitution that “would eliminate New York’s complex maze of 11 separate trial courts and replace it with a simple three-level structure to make the courts easier to navigate, increase operational efficiency and reduce costs to litigants ...” New York State Unified Court System, Press Release, Sept. 25, 2019. Slightly more than a month and a half later, headlines for articles began to appear on Twitter, which read, among others: “Coalition’s family law plan ‘will hurt children and families’: lawyers”; “‘Safety must come first in family law’: Legal groups reject merger plan”; and, “Editorial: Difficult path ahead for family law court system but change must come.” Surprisingly, these were not headlines in the New York press, or even in our national media. Instead, these headlines can be found in the Australian publications: the *Sydney Morning Herald* of Nov. 1 and 11, 2019, and Melbourne’s *The Age* of Nov. 11, 2019.

Oftentimes, it is instructive for lawyers practicing divorce law in New York to look to developments in sister states here in the United States and in foreign nations. For example, California adopted “no-fault divorce” some 40 years before New York enacted its own no fault law with the support of then Chief Judge Judith Kaye in 2010, and Australia likewise entered its own no fault divorce era in 1975, while Ireland held a referendum in May 2019 where a majority of that nation’s voters supported the

enactment of no fault divorce based on a four-year separation period. Thus, different jurisdictions address the same vexing issues of family and divorce law in their own fashion based on parallel perceptions of what is in the public interest based on changing mores and societal needs.

New York's Office of Court Administration (OCA) in its September 25th Press Release, *supra*, outlined the "key elements" of court merger, stating that "the Chief Judge's proposal offers a blueprint for a modern judicial system fully capable of delivering efficient, affordable and high quality services" by abolishing, among other courts, the Family Courts and the Surrogate's Courts by merging "their judges and jurisdiction into the current Supreme Court," stating: "More than eliminating a confusing array of courts, this merged Supreme Court will lead to greater diversity on both the Supreme Court and the Appellate Division bench." The merged Supreme Court would consist of six divisions: Family; Probate; Criminal; State Claims; Commercial; and General.

"Under the current way the judiciary is set up, a survivor of domestic violence may have to attend criminal court proceedings for the charges against their alleged abuser and have a separate case in civil [Supreme Court] to finalize their divorce." Dan Clark, [*DiFiore's Trial Court Restructuring Plan Draws Opposition from Justices' Group*](#), NYLJ, Oct. 8, 2019. One of the many proclaimed benefits of the plan separately delineated by Chief Judge DiFiore is that "it will ensure that litigants, particularly families, will be able to have their multiple legal issues addressed by one judge in one court." Chief Judge Janet DiFiore, [*Bench and Bar United on Need to Simplify New York's Court Structure*](#), NYLJ, Jan. 24, 2020.

The proposed New York Constitutional Amendment specifically provides for the creation of a Family Division within the Supreme Court "for actions and proceedings for marital separation, divorce, annulment of marriage and dissolution of marriage, and actions and proceedings within the jurisdiction of the former [F]amily [C]ourt." Thus, the new Family Division of the merged Supreme Court would hear cases involving divorce, separation, annulment, child custody, child support, spousal support, support enforcement, equitable distribution of property, exclusive occupancy of a family's residence, child protective proceedings, paternity, family offenses (including domestic abuse and domestic violence), persons in need of supervision, juvenile delinquency, adoption, guardianship, etc.

The Office of Policy and Planning of OCA, describes what many family and divorce law judges and attorneys consider a successful integration and consolidation of the workings of the courts in the domestic violence arena that will provide a template for the consolidation of cases within the proposed Family Division, which would be established by the constitutional amendment, as follows:

New York State's **Domestic Violence Courts (DV)** make decisions regarding criminal offenses involving intimate partners. Essential features of DV Courts include: a dedicated judge; specially-trained staff; resource coordination; on-site victim advocacy; and collaboration with technical assistance teams.

An **Integrated Domestic Violence Court (IDV)** hears domestic violence matters involving both criminal and family law cases. In an IDV Court, one judge is assigned to the family's cases. Both courts have been developed as part of the justice system's coordinated response to domestic violence and are dedicated to enhancing victim safety and holding offenders accountable. DV & IDV

courts connect victims to needed services, ensure intensive court monitoring of abusers, and promote increased coordination between the court, community partners and victim services providers.

The overriding priorities of a consolidated Supreme Court, Family Division, must be that it is charged to protect children and families from and minimize their exposure to all forms of domestic violence and domestic abuse, to ensure that adequate financial support is provided to non-moneyed spouses and their children on a timely basis at the outset of a case and throughout its pendency, to make custody and child access determinations in a realistic and meaningful timeframe, to minimize the costs of litigation, and to resolve family disputes on an expedited basis. The key to unlocking the resolution of family law disputes on a cooperative basis among parents and spouses, outside of the forum of contested litigation, can be found in a consolidated court system. Fortunately, the process that requires two successive legislatures to approve amendments to the New York state constitution, followed by a vote of the electorate, means that OCA will have several years, which is more than sufficient time, to plan for the implementation of the vision of Chief Judge DiFiore's concept of a Family Division of such a consolidated Supreme Court. It behooves the bench and bar to support court merger.

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