

# Family Law Review

A publication of the Family Law Section of the New York State Bar Association

## Notes and Comments

Elliot D. Samuelson, Editor

### Family Law Reform Desperately Needed

or

*“We made too many wrong mistakes”—Yogi Berra*

The practice of matrimonial law has become increasingly more difficult. There are a number of reasons for this state of affairs, the least of which has been a substantial number of new matters being filed with the courts, and the lack of sufficient jurists to deal with them.

Whether because of these increased filings, or an inefficient system to process these matters, calendar delays have reached epic proportions, and it is not unusual to wait three to six months for a decision on a motion, or six months or longer to obtain a trial date, after a note of issue has been filed. To observe that these statistics are unacceptable does nothing to alleviate their problem.

In writing this column for over 30 years, I have been witness to great changes in matrimonial practice. It is clear that it is as unacceptable to be a critic without solutions as are the calendar delays in the matrimonial parts. While nothing I can write can effect a global change of these problems, calling for the cooperation of the bench and bar, as well as the administrative judges who deal with the matrimonial sector, may well be the foundation to effect change that will do away with these deficiencies. In so doing, we may very well enter a new era of practice, which will preserve the best interests of matrimonial litigants and elevate the standards by which all practitioners should adhere.

Parenthetically, it should be observed that the judges assigned to the matrimonial parts are singularly overburdened with a caseload that cannot be processed within reasonable time constraints. What of course is needed is for the administrative judges to assign at least 25% more jurists to these parts to alleviate the delays in decid-

ing motions and trying cases and reduce the staggering calendar congestion. Justice delayed is justice denied. If a system is in crisis, then extraordinary measures must be utilized to effect change. Enlarging the number of jurists dedicated to the matrimonial parts is a first step. Perhaps, even doing away with the matrimonial parts and allowing all domestic relations matters to be heard by the entire bench in each county would be a better choice. Whatever choice is made, it is clear that either action

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would instantly spread out the caseload of the sitting matrimonial jurists. But one thing is clear. It is intolerable for a contested matrimonial case to languish in the courts for months and sometimes years on end without resolution. We should not stand idly by and do nothing, awaiting another exposé by the *New York Times*.<sup>1</sup>

What must be done in the meantime? The answer to this question is most complex and cannot be resolved without careful reflection and the exercise of prudent judgment. I have attempted to do just that, in arriving at a 10-point program that I feel may create an atmosphere of collaboration, cooperation, and conviviality, and reduce delays. In essence, this proposed solution can be articulated within the following aspirations.

1. All motions that are filed in a matrimonial part may be adjourned upon the consent of the parties by simply notifying the court in writing of the new court date selected.
2. All individual court rules should contain a provision that if a motion has not previously been adjourned, any contested application for such adjournment will be normally granted, except for extraordinary circumstances that would require the denial of the application.
3. Litigants will not be required to attend preliminary conferences nor at the return date of any motion that is made during the course of the litigation, except where one of the parties requests that both parties be present. In such instance, it will be incumbent upon the party who requests a personal appearance before the court to seek the consent of his or her spouse, before making such request to the judge assigned to the case. Such requests shall be made by telephone conference call by the attorneys representing the parties.
4. All motion calendars, shall be staggered throughout the day in one hour segments. For example, if there are 12 cases on a court's motion calendar that require the appearance of counsel or the parties, there shall be six one-hour segments beginning at 9:30 AM, recessing for lunch between 12:30 AM until 2:00 PM, so that two cases will be calendared in each segment. This will greatly reduce the cost to litigants for their attorneys having to bill for waiting time and the clients having to lose time from their profession, businesses or child care obligations when personal appearances are mandated.
5. The court will not require the submission of printed forms on the day counsel appear before the court. Instead, such forms will be completed prior to the return date of the appearance, and submitted to the court by e-mail. If counsel fails to comply with this rule, the matter shall be marked off the calendar and no access will be had to the judge assigned to the case, or his or her law secretary. If other forms are required to be submitted on the return day of the motion, the same rule will apply. For example, if it is required that the parties exchange net worth statements, such submission shall be made by e-mail at any time prior to the return date of the motion. If, however, one party fails to comply with this rule, the defaulting party will be penalized by imposing fines that will compensate the non-defaulting party for the wasted time in appearing before the court and finding that the case is not on the calendar because of the failure of one party to comply with these rules.
6. The court will set aside one hour of each day for telephone conferences with the attorneys for the parties. Counsel must communicate with the judge's chambers and obtain a time that these telephone conferences can be had. These telephone conferences, in order to be productive, must contain a written agenda of the points to be discussed and the arguments advanced by each side and must be submitted to the court at least three days prior to the conference.
7. Trials of contested cases shall be held from day to day until completed. On the days that a court is engaged on trial, the court's law secretary shall conduct all conferences in an attempt to resolve all such matters. No case that is on trial shall be adjourned to a later date without an extraordinary reason to do so.
8. All judgments and orders submitted to chambers shall be returned and signed no later than ten days following receipt.
9. No appeal shall be taken before a conference is had with the trial court, wherein it will be discussed if there is any possibility of resolving these issues and settling the matter. The time consumed in such settlement negotiations will be deducted from the 30 days that a notice of appeal must be served.
10. No oral arguments will be permitted on motions in the Supreme Court. Oral arguments in the appellate courts shall only be made upon the request of the court after receiving the briefs of counsel, and all arguments contained therein.

Whether any or all of these 10 points can be implemented remains to be seen. But one thing is certain, a collaboration between bench and bar to arrive at these economies of time will certainly improve the practice with the resultant benefits to litigants.

We ask our readers, both from bench and bar, to submit to us their reactions to this column and any suggestions they have that will result in an economy of effort that will aid in ending, or at least reducing, the unacceptable delays with processing matrimonial litigation.

The problems discussed in this article have been addressed within Nassau County by a special panel of experienced matrimonial practitioners, and they have submitted written recommendations to the administrative judge in an effort to alleviate congestion and enact necessary reforms. It is urged that every bar group throughout the State join these efforts, which may well create a cascading snowball of judicial reform.

After considering all of these initiatives, it may well be the best solution to eliminate the matrimonial part altogether. It really has been a dismal failure, especially viewed by the *raison d'être* of reducing delay in divorce matters. A dedicated part seems an abject failure, especially when there are not enough judges to handle the

increased caseload that population explosions have created. Being able to use all judges in each county, seems a reasonable solution.

#### Endnote

1. A recent dissenting opinion of Justice Leonard Austin in the Appellate Division, 2d Dept., in *York v. York*, 2012 Slip Op. 06212, 2012 WL 4094961 (2d Dept. 2012) is reflective of how far delays have traveled in matrimonial litigation.

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