
The High Performance Court and Divorce Case Triage

Final Report

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Acknowledgements

In 2014, the National Center for State Courts, with support from the State Justice Institute, assembled an international advisory committee of academics, researchers, jurists and court administrators to learn and document how Courts apply triage techniques to improve case processing and ameliorate the detrimental effects of separation of families. We would like to thank the committee members for their thoughtful insight on creating a practical tool and approach for moving the judiciary to an increased focus on triage of domestic relations processes.

NCSC also wants to thank the staff of the Miami-Dade Court for their willingness to share their experiences in domestic relations triage. The Miami experience gives hope that a triage approach can be applied to even the largest jurisdictions to reduce conflict and increase access to the services that families need at a vulnerable time.

Many courts are seeking new ways to better manage and resolve difficult, emotionally-charged divorce cases in ways that more appropriately meet the needs of individual families. By applying the principles of the High Performance Court Framework (HPCF), a domestic relations court can develop and implement a triage process to meaningfully differentiate cases. Effectively sorting cases onto alternative tracks makes it possible to streamline the process for uncontested divorces, while preserving limited court staff time and resources for contested cases and families needing greater attention.

This article examines the development of a model case screening tool for divorce cases, with the primary focus on early identification of uncontested divorce cases. The rationale for case differentiation, or triage, is discussed first, followed by a review of the instrument itself. The final section draws on the *quality cycle*, a problem solving strategy developed in the HPCF, to discuss how a court can refine and adapt the model screening tool for use in their own specific circumstances.

Divorce Case Triage and Why It's Important

A large number of courts process all divorce cases alike, each case moving through the same set of prescribed steps. In this model, a family's case will move along a continuum of court-connected events beginning with the initial filing and progressing through such services as parent education classes, mediation, and judicial settlement conferences. Peter Salem (2009) describes common practice for service delivery in divorce cases:

These services are traditionally offered in a linear or tiered fashion, where families begin with the least intrusive and least time consuming service and, if the dispute is not resolved, proceed to the next available process, which is typically more intrusive and directive than the preceding one. Under a tiered service model, virtually all parents participate in mediation and in many jurisdictions are required by statute or administrative rule to do so.

The challenge of a tiered process is that it requires all participants to receive the same services, particularly mediation, regardless of whether that is in the best interest of the parties involved. This approach burdens those where both sides are largely in agreement and just want to have the case resolved in timely fashion, while siphoning resources away from families that may truly benefit from enhanced services.

While specific procedures vary by jurisdiction, the parties in a divorce case face a similar set of potential steps. Especially in the early stages, before the bulk of services begin, divorce cases everywhere tend to move from initial complaint to service on the respondent to answer (or not) by the respondent. For uncontested cases, these early events offer multiple opportunities for triage. This outline illustrates the typical beginning of the case flow process, making it possible to see the different points where some cases appear ready to move to the judgment of divorce—without the need for services such as mediation.

Generic outline of steps in divorce/dissolution cases

1. Initial complaint (file for divorce)

- Agreement on all issues?
 - Yes:
 - Paperwork completed and signed – **Case ready to be processed**
 - No: do you need help with paperwork (or other administrative issue)?
 - Yes: If you get help, do you expect to have agreement on all issues?
 - Yes: **Case ready to be processed**
 - No: What assistance is needed?
 - Administrative issued addressed: **Case ready to be processed**
 - No: Proceed to service on respondent, temporary orders, etc.

2. Service on respondent (serve other side with all paperwork)

- Did other side file a response?
 - If no answer filed: Agreement on all the issues

- Yes: Submit default judgment for court approval – **Case ready to be processed**
 - No: Proceed to next step
 - If answer filed: Agreement on all issues
 - Yes: **Case ready to be processed**
 - No: Case goes on to contested track (e.g., mediation, settlement conference)
3. Triage to determine referral to appropriate services (e.g. mediation, online communication tools, legal aid, parenting education and support, early neutral evaluation/assessment, therapeutic services, etc.)

While this is certainly an abbreviated set of steps, the main purpose is to show that many—if not most—litigants are ready to have their divorce cases resolved with little court involvement. A substantial number of parties begin divorce proceedings with agreement on the issues as well as having all paperwork completed and signed. Having worked it out themselves, they are primarily interested in getting the required court judgment in a timely fashion with a minimum of court appearances.

Another sizable group is made up of litigants who have or are close to agreement on all issues but need some help navigating the process and making sure all required documents are identified and properly prepared. Even for uncontested divorces, it can be a challenge to get clear on all issues that need to be addressed and to accurately complete and sign all required documents. The help they need is typically administrative and can be readily provided on a website or by court or self-help center staff.

Identifying early the parties willing and prepared to proceed with an uncontested divorce allows the court to facilitate their efforts by clarifying in plain English the documents required and reducing to a minimum the number of procedural steps. These court customers want a process that they can complete in a timely and affordable way once any mandatory waiting

period is over. Differentiating cases also preserves scarce court resources and allows them to be directed toward more contested divorce cases where such services as mediation, pre-settlement conferences and early neutral evaluation will likely benefit the parties.

Developing a Divorce Case Screening Tool

Many court leaders believe a majority of divorce cases can be disposed in an expedited fashion by application of triage processes. Courts that effectively triage domestic relations cases commonly screen cases to distinguish parties ready for resolution from those that may require greater court involvement and services. The purpose of screening is to grant a judgment of divorce at the earliest opportunity that best meets the needs of each individual family, while also ensuring parties receive the level of oversight and support necessary for a fair outcome.

To support courts interested in pursuing divorce case triage, the National Center for State Courts, in collaboration with the states of Colorado, Ohio, and Utah, received funding from the State Justice Institute to develop a model screening tool. With guidance and input from an advisory committee comprised of domestic relations experts, the NCSC designed a screening instrument that courts can use to determine which families need little to no court services. Since processes and procedures differ greatly from court to court, the tool was not designed as a one-size-fits-all instrument. Rather, the design is sufficiently flexible to be readily adapted to fit a court's specific jurisdiction.

Initial Screening Form

Dissolution/ Divorce – Uncontested

Background questions? (name, address, age, employment, children, living arrangements)

List all requirements prior to filing (e.g. lived apart for a year)

	Yes	No	Partial	Unsure	NA
1 Is there full agreement between both parties on the following issues?					
Division of property and assets/liabilities	1	2	3	4	0
Parenting Plan/ Custody/Visitation	1	2	3	4	0
Child Support	1	2	3	4	0
Spousal support	1	2	3	4	0
<hr/>					
2 Have you prepared all required court documents?					
<i>List of documents/ Links to documents and instructions/definitions if available on the web</i>					
Information/Case Designation Sheet	1	2	3		
Petition/Complaint	1	2	3		
Financial Disclosure Statement	1	2	3		
Separation agreement (addresses asset/debt division/spousal support i.e. non parenting matters)	1	2	3		
Parenting plan (addresses parenting decision-making, child support and medical support)	1	2	3		
Parenting Proceeding Affidavit	1	2	3		
Voluntary Appearance	1	2	3		
Draft order/entry	1	2	3		
<hr/>					
3 Are all of the required documents completed and signed with all affidavits notarized?	1	2	3		
<hr/>					
4a If yes to all parts questions 1, 2, and 3 - Person is ready to have their case processed immediately					
What to expect next blurb - For example: You have completed all the necessary steps to start your divorce proceeding. Once you have filed the petition with the court, there is a 90 day waiting period. During that time, you still need to obtain a final hearing date, notify the other party, attend your final hearing, and obtain your certified copy of the divorce decree. Additionally, do not forget those miscellaneous items, such as changing vehicle titles, deeds, and names on accounts. For instructions/information on any of these items, please click the links below (or in person, ask the court staff)					
Waiting period					
Obtaining and notification of final hearing date					
Final hearing					
Obtaining certified copy					
Next steps (e.g. refinance debt, quitclaim deed, change vehicle titles and accounts, etc.)					
Any other steps to finalize process...					

4b If "no", "partial", or "unsure" to any part of question 1, 2, or 3 - Person is a may need minimal assistance before having their case processed

What information, services, or assistance do you need to help you through this process? (Check all that apply)

- Information about the divorce process
- Help with court forms (*links or access to forms and instructions*)
- Help with drafting the Separation Agreement
- Help with drafting a Parenting Plan
- Help with deciding financial issues (dividing assets/liabilities, setting spousal support)
- Help with computing support (spousal and child), guidelines, and calculators
- Online communication tools (e.g. OurFamilyWizard)
- Legal Aid
- Parenting education and support e.g., effect of separation/conflict on children, communications coaching, transitioning into shared parenting, etc.
- Child education and support (e.g., transitioning into a restructured family, peer support groups)
- Mediation
- Early Neutral Evaluation/Assessment
- Therapeutic Services for parent and/or child
- Unsure of specific type of assistance, but would still like help
- None: I do not expect agreement from the other party

Decision point for Courts - How to ensure the litigants gets the service they need (e.g. - self-help, links, etc.) to continue and not "get stuck"

If assistance is received, person is ready to have their case processed immediately

- 5a Once you have the information and services needed, next steps to keep the process going
See 4a above - List same information

If nothing is selected or the services/assistance were not sufficient, person is moved to triage

- 5b Case triage

Possible Safety questions to include with initial screening

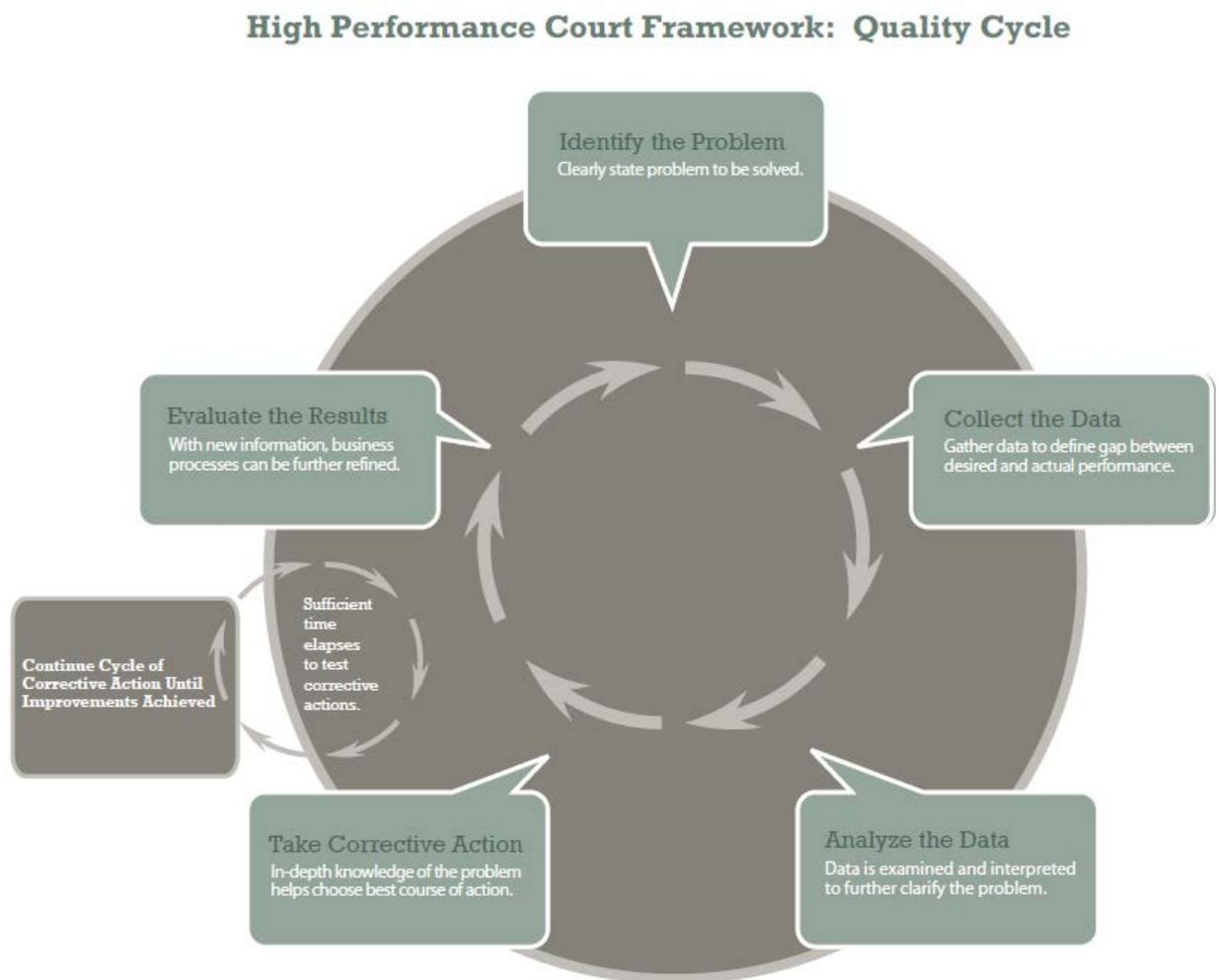
	Yes	No	NA
1 Are you afraid for your safety?	1	2	3
2 Are you afraid for the safety of your children?	1	2	3
3 Has the other party ever physically hurt or harmed you?	1	2	3
4 Has the other party ever physically hurt or harmed your children?	1	2	3
If yes,			
If so, have the police been involved?	1	2	3
Are there any court orders such as peace bonds, probation orders, bail conditions or restraining orders?	1	2	3
Are there any pending criminal charges between you and the other party?	1	2	3
5 Would you like assistance in obtaining an emergency protection order now?	1	2	3
6 Have you ever stayed at a transition house or shelter/safe house because of the other party's actions?	1	2	3
7 Has the other party ever followed you, had you watched, tracked your phone calls/emails or threatened/harassed you to cause you to fear the safety of you or your children?	1	2	3
8 Has the other party ever taken your passport or citizenship documents or threatened to have you deported?	1	2	3
9 If you have a disability or require supports for daily living care, has the other party ever refused or threatened to refuse to provide food, suitable clothing, medical attention or the supports for daily living?	1	2	3

Taking a closer look at the screening tool provides an example of questions that courts could ask to identify the cases that are ready for early resolution and require little to no court assistance. A key step is to ascertain if both parties have reached agreement on all issues surrounding their divorce (e.g. division of assets/liabilities, custody/visitation, child or spousal support). If the litigants agree on these main points, then they have worked through the potentially most time consuming piece of the process. On the other hand, the litigants may agree on the majority of issues, but have one or two remaining concerns. It is important to identify where agreement is lacking and then be able to quickly direct the litigants to the most appropriate services to resolve their case quickly. For example, perhaps a family has agreed on child custody, support, and parenting, but they are uncertain on how to divide the assets and liabilities appropriately. This family may benefit from a simple example of how assets and liabilities are typically split. Or the family may need assistance with drafting a separation plan. Once these needs have been determined, a court can take appropriate steps to ensure the litigants get the assistance required to keep the process moving forward.

Another step in the process that can cause delay is paperwork. Many litigants may know what they want and have complete agreement surrounding their divorce. However, they may not know all the paperwork required, how to obtain the necessary documents, and how to accurately fill them out. Additionally, litigants may not know what to do or what to expect from the court after the paperwork is complete. Is there a waiting period? Will there be a final hearing? Do both parties need to be present? These types of questions should be answered early in the process to avoid delay and confusion later. The ultimate purpose of the tool is to identify litigants who are ready to complete the process (uncontested) and to make certain they do not get lost in the system or forced into services that they do not want or need.

How a Court Can Proceed to Develop a Screening Tool for Divorce Case Triage

For courts interested in moving forward to evaluate the use of a divorce case screening tool, the NCSC suggests the “quality cycle” process laid out in the High Performance Court Framework (HPCF). The quality cycle is a set of flexible steps a court can take to integrate and implement performance improvement into its ongoing operations. It consists of five main steps: clearly stating the problem, data collection, data analysis, taking action, and evaluating the results.



The quality cycle starts by being clear about the problem to be addressed. In the case of divorce case triage, the goal is to develop a triage system that will allow a court to effectively

assess whether they are over-delivering or under-delivering family court services in divorce proceedings. One possibility is:

Problem statement: Develop a means to differentiate divorce cases based on the level of court involvement and services needed to better meet the individual needs of litigants and effectively resolve the case.

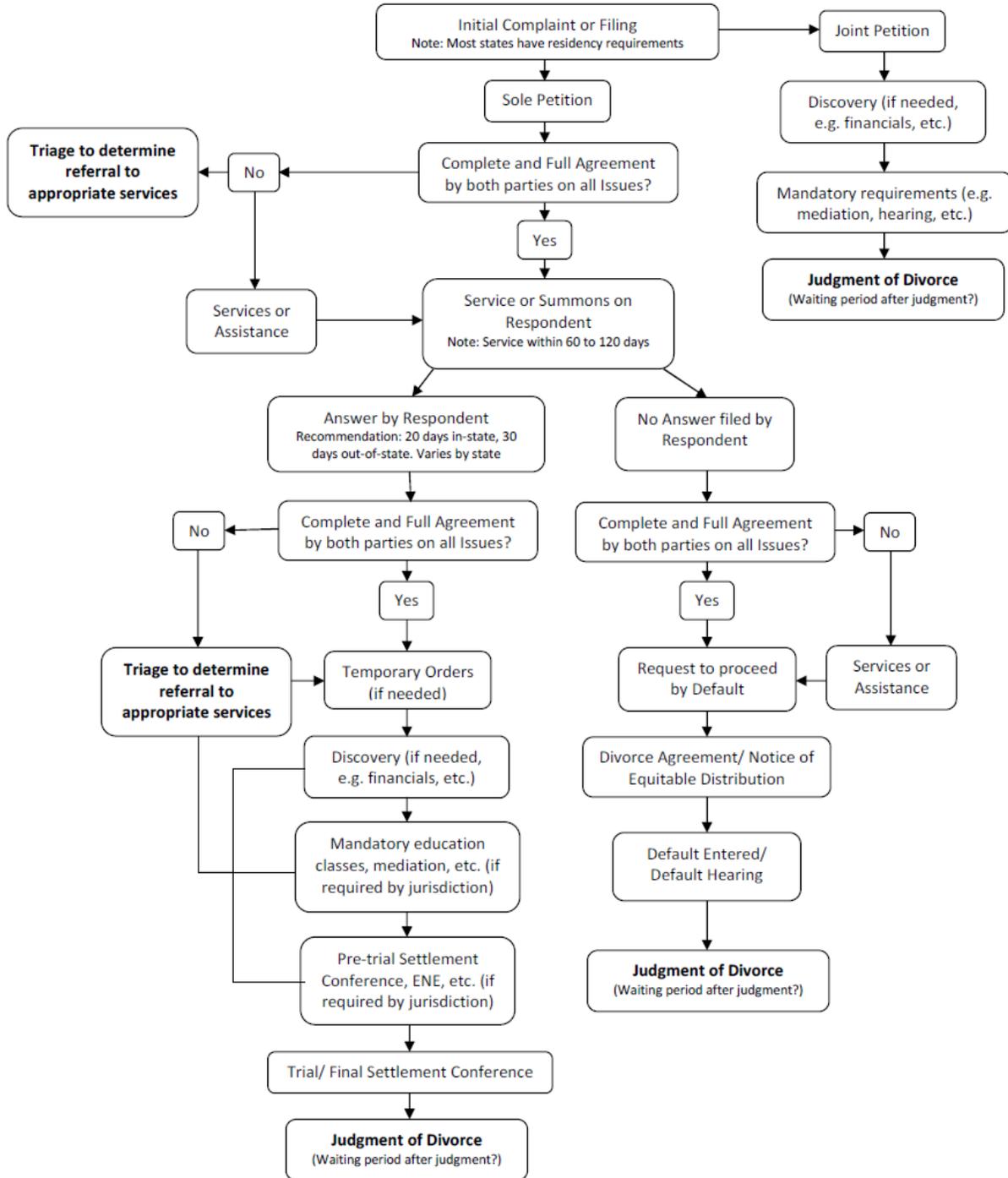
Steps two and three of the quality cycle involve compiling and analyzing data relevant to better understanding the true cause of the problem and what actions might be taken. For step two, a court may want to assemble an empirical profile of current case processing practices for divorce cases. For example, they may decide to compile data on time to disposition (as well as time between certain intermediary events) and age of the active pending caseload in divorce cases, while also conducting a targeted survey and/or focus group with litigants who seek minimal contact with the court. The screening tool discussed above is primarily focused on identifying early in the process uncontested divorce cases. Knowledge of current case processing practices and views of the parties in uncontested cases allows the court to craft a screening tool to better meet the needs of this group of litigants and document the benefits in terms of improved service and timeliness.

As part of the data collection process, it is also important to make sure the potential steps in divorce proceedings are clearly documented in a flow chart. A flow chart clarifies points of contact between litigants and the court, and helps a court identify opportunities for triage. A sample divorce/dissolution flow chart is shown here.

Divorce/Dissolution Flowchart

Mandatory Waiting Period – Time could be used for creating separation agreement, parenting plan, division of assets/debts, etc.

Varies by State – 20, 30, 90 days or 6, 12, 18 months – When does the waiting period begin – At filing?



The third activity in the cycle is analyzing and interpreting the results from the data collection and drawing out their implications. Bringing data to bear help judges, management and staff more clearly understand current practice and what actions might be taken to improve case flow and enhance customer satisfaction. For example, time to disposition data shows that divorce cases fail to meet the benchmarks for timeliness, even default judgments take many months to be resolved (not including the statutory waiting period). Looking more closely shows a bottleneck with service on respondents, which is consistently slow, and prevents parties where no answer is forthcoming from applying for a default judgment in a timely way. Also, court staff state that once the petitioner meets all time requirements, the paperwork associated with the application for default judgment is often not completed correctly and must be rejected. This leads to longer delays and increasing frustration by people who just want to move on with their lives.

This third step in the quality cycle is clearly iterative. Once the basic character of a problem is identified, additional information can be gathered to further narrow and refine the problem. Continuing with the above example, survey and focus group results find that many litigants don't want or need court involvement (e.g., mediation), they just need some assistance in making sure the paperwork is completed correctly. The result is divorce cases are taking longer and backlogs are increasing, while litigant (customer) satisfaction is declining.

Such additional information might allow the problem to be more succinctly stated as “failure to identify uncontested divorce cases early does not allow the court to differentiate cases needing less court involvement from those requiring greater involvement and services, delaying all cases and increasing the workload of judges and staff.”

After digesting the results, the fourth step in the cycle is taking action to implement the appropriate change. Clearly specifying the problem allows court managers to identify the particular business processes involved. In this case, the court can develop a divorce case screening tool tailored to the specific requirements of the jurisdiction. Drawing on the model screening tool included here, each individual court can modify the scope and content of the tool to meet its own particular circumstances.

The fifth step involves checking to see whether the solutions have had the intended result. By continuing to seek input from appropriate judges and court staff and monitoring the relevant performance indicators, the court can determine if the problem is really fixed. The goal is not to temporarily get problems under control, but to achieve continuous and sustainable improvements in the process and in customer satisfaction. For example, once a divorce case screening tool has been implemented, the court should examine how it is working in practice such as whether there has been an improvement in the timeliness of default judgments or if litigant satisfaction has improved. If the data show that performance has not sufficiently improved, another round of problem assessment is required.

Of course, successfully solving one problem isn't the end of the story. In this context, a key idea of the quality cycle is continuous improvement in the handling of all divorce cases. While many litigants know what they want and can proceed with little court involvement, there are also many parties that do not agree and feel that they cannot agree. Nor do they know how to proceed to get resolution on their issues. For these more contested cases, a natural next step is to extend the screening tool to aid in identifying what particular assistance and services each individual family needs to resolve their case as quickly and fairly as possible. The NCSC is hoping to continue working with partner courts to more fully develop the full extent of the triage

concept for divorce cases. The goal is to help courts more appropriately use scarce resources. Whether the services are as minimal as explaining what to expect next and directing litigants to a self-help center or require greater court involvement, such as mediation and ENE, each family should get the services needed for their specific situation.