Court Triage System is Redefining Success, One Family at a Time

Ohio’s new continuum aims to help families choose their best dispute resolution option

By Richard Altman and Jacqueline C. Hagerott

In Ohio’s family courts, “success” was once a reasonably straightforward concept. The purpose of courts was to resolve cases by processing them — and thereby remove them from the docket. As long as this happened in a timely manner and courts met the state Supreme Court guidelines for doing so, courts were successful.

Over the past three decades, people who work with families, including those involved in the courts, have agreed that this recipe omits a critical societal factor: a focus on families’ futures.

Today, the definition of a court’s “success” has evolved to include helping the parties develop a healthy ongoing relationship and minimizing the need for contentious and expensive court processes that can harm everyone involved, especially children. Ohio family courts have been using mediation to accomplish this goal since the mid-1980s. More recently, they have also recognized the need to expand beyond mediation and provide effective alternative family dispute resolution processes. And they do this within strict financial constraints.

How do judicial officers and lawyers know which dispute resolution process to assign and/or request? Given limited court resources, which process is most likely to help families succeed in developing a foundation for a healthy co-parenting relationship and make effective use of limited court resources? To answer these questions, some family courts in Ohio have implemented a comprehensive program called...
The 21st Century Family Court Triage System (hereafter Triage System). This article provides an overview of that dispute resolution continuum.

The dispute resolution continuum

Judicial officers and lawyers in Ohio realize that each dispute resolution process, like each individual case, is unique. Depending on the facts and characteristics of a particular case, one process will help a family resolve its case, and another process may not. The Ohio continuum of dispute resolution processes used in the family courts’ Triage System has expanded to include negotiation, mediation (facilitative and evaluative), neutral evaluation, parenting coordination, and litigation to help parties resolve their disputes and build the foundations they need for healthy relationships that will not require ongoing court involvement.

The 21st Century Family Court Triage System

In medicine, the term “triage” refers to the process of sorting people based on their need for immediate medical treatment as compared to their chance of benefiting from such care. Triage is often done in emergency rooms, disasters, and wars, times when limited medical resources must be allocated to maximize the number of survivors, but it can also have a less urgent goal: assessing people’s needs, allocating resources where they are most likely to bring success, and ideally helping patients recover and thrive without continuing attention from medical professionals.

Applying the same concept to the judicial system, with the goal of developing a healthy ongoing relationship between parties so they don’t need ongoing court involvement, is long overdue.

The Triage System includes three essential elements:

- Identifying the role of the judicial officer(s) and lawyer(s)
- Choosing the appropriate neutral based on qualifications and skills
- Establishing the factors that determine which dispute resolution process is most likely to achieve success

Families may use more than one neutral and participate in more than one process over the course of their case.

Under this system, judicial officers work in collaboration with lawyers to assess each case and determine the process that could not only most effectively resolve the case but give parties the tools and understanding to create a foundation for a healthy, ongoing relationship and avoid the need to return to court. Judicial officers and lawyers accomplish this by analyzing the factors listed below and choosing a neutral who is well suited to the case, the parties, and the process.

In assigning neutrals, courts have historically applied a “one-size-fits-all” approach. The Triage System, however, looks deeper, fitting the dispute resolution process and the neutral to the facts and the parties (or the lawyers) in the case. It does this by closely analyzing the issues of the case and deciding exactly what skills and qualifications a neutral will need. Judicial officers and lawyers seek the following minimum qualification and skills in neutrals:

- Experience in mediation (not required but beneficial for negotiation and litigation)
- Knowledge of the mediation process and the dynamics of conflict, understanding of domestic abuse and screening, and awareness of the disclosure requirements for abuse, neglect, and harm
- Ability to communicate effectively verbally and nonverbally and to teach others how to do the same to prevent and resolve future disputes without court intervention
- Ability to identify, frame, and summarize facts, issues, and solutions using questioning and clarifying skills
- Knowledge of how to evaluate conflicts of interest and withdraw when necessary
- Ability to acknowledge and manage emotions (the parties’ and the neutral’s own)
- Capacity to provide effective feedback
- Ability to make decisions promptly
Triage System Analysis

**Negotiation**
Factors: low level of emotion, parties communicate well and are represented by lawyers or are capable of self-negotiating
Additional qualifications and skills of the neutral: none

**Mediation**
- **Facilitative Mediation**
  Factors: Parties are willing to negotiate, have or are willing to share information necessary to assist in reaching resolution, and show no sign of having a substantial or insurmountable power imbalance
  Additional qualifications and skills of the neutral: ability to implement and enforce ground rules

- **Evaluative Mediation**
  Factors: parties have a substantial power imbalance, are locked into an unrealistic position or unable to see a reasonable argument from the other side, and/or have legal issues at dispute that impact their positions
  Additional qualifications and skills of the neutral: the neutral is an expert with a high level of professional respect regarding the issues being evaluated

**Neutral Evaluation**
Also known as “Early Neutral Evaluation” (Ohio refers to this process as “Neutral Evaluation” because this process can be used at all stages of the case)
Factors: same as evaluative mediation, but parties need their “day in court.” This goal is accomplished with neutral evaluation because the process has the appearance of adjudication

**Additional qualifications and skills:**
- as with evaluative mediation, the neutral is a subject-matter expert with a high level of professional respect regarding the issues being evaluated and has the ability to make a comprehensive evaluation at the end of the process. This process also gives the parties and lawyers the ability to ask questions of an expert and then shift to facilitative mediation to create an agreement based on the evaluation.

**Parenting Coordination**
Factors: parties who are commonly referred to as “frequent flyers” or “frequent filers” who have multiple filings with the court and ongoing issues related to children that require timely responses
Additional qualifications and skills of the neutral: extensive mediation experience, strong legal/mental health background in managing children’s issues, knowledge of and ability to manage abuse issues, ability to make immediate and effective decisions, good writing skills, and ability to implement and enforce ground rules

**Litigation**
Factors: parties are incapable of communicating or following any mutual agreements, will not effectively participate in any dispute resolution process, are unwilling or incapable of objectively entering into negotiations, and/or have issues that can be managed only by a judicial officer
Additional qualifications and skills of the neutral: appointed or elected to serve as a judicial officer for the court, ability to control and maintain order in the courtroom, strong decision-making ability based on legal interpretation, and good writing skills
• Knowledge and experience enough to distinguish between interests and positions
• Ability to demonstrate impartiality, empathy, patience, and active listening skills and to establish trust

The Triage System also requires judicial officers and lawyers to consider multiple factors in determining which dispute resolution process is likely to result in success.

Factors that need to be analyzed to determine the appropriate dispute resolution process for all cases include:

• The parties’ communication skill level
• Legal representation
• Complexity (or lack thereof) of the legal issues
• The level of emotions exhibited by the parties
• The impact of power imbalances (if any exist)

Additional factors and qualifications and skills for neutrals specific to each dispute resolution process (in addition to those listed above) used by judicial officers and lawyers for the Triage System analysis are described on page 8.

The term “high-conflict” is not included as a factor for three reasons: 1) there is no uniform definition for “high-conflict,” so judicial officers do not want to have to declare that parties are “high-conflict” before ordering parties into a particular process; 2) courts do not want parties to have a less-than-favorable label attached to them; and 3) not including a requirement of “high-conflict” gives judicial officers broader discretion. The term “parties” is also used in lieu of “parents” to include other individuals, such as grandparents.

Because sometimes one process works at the start of a case but proves ineffective as things progress, this system is not applied just once. Families may use more than one neutral and participate in more than one process over the course of their case. Those screening and assigning cases perform the Triage System analysis regularly until the case is closed.

**Allocation of court resources**

Dispute resolution processes, when properly applied, are successful, but they cost money. And in Ohio, as everywhere else, courts face huge challenges in finding funds and controlling costs. Ohio courts finance their neutrals’ services in various ways, including grants, filing fees, agency partnerships, and pro bono work by law students.

In the late 1990s and early 2000s, the Ohio Supreme Court directed grant funds to assist the state’s court mediation programs. But those days are gone. Today, courts must develop their own funding sources. Creative thinking and solid evidence of return on investment are the keys to finding grant funds.

In one program in northwest Ohio, participants and attorneys provided objective evidence of the program’s value through participant surveys. That data, along with settlement rates, allowed judges to present objective evidence of cost savings to their county officials, which resulted in additional county funding. Other counties fund their programs from fees that are added onto their court filing fees, while other courts charge more for cases that are referred to dispute resolution. In larger courts, such fees may cover all the costs of operating a program; in other, smaller venues, they can be a huge help.

Partnering with outside agencies can raise additional funds. For example, the courts of northwest Ohio partnered with the Four County Alcohol, Drugs and Mental Health Board (known as the ADAMhs Board), whose mission is to ensure the availability of an effective integrated care delivery system through the planning, monitoring, funding, and evaluation of the behavioral health needs of the area’s four counties. The ADAMhs Board agreed to provide funds to support the cost of parenting coordinators for families that cannot afford that expense. Here, the return on investment is clear: these funds are available because the courts have shown that reducing parental conflict helps children’s and parents’ mental health. Agencies such as the ADAMhs Board exist in most communities and are willing to get involved to help families in transition.

Students are another valuable resource: courts have established partnerships with local universities such as the University of Toledo Law School and
Capital University Law School. Their mediation clinic students provide dispute resolution services for the courts under the supervision of university faculty and staff. The students get real-life experience, and the courts and families get free services.

**Conclusion**

Just as the multi-door courthouse idea has evolved since it was introduced more than four decades ago, the meaning of family court case “success” has changed. The 21st Century Family Court Triage System requires that judicial officers and lawyers collaborate closely to determine which dispute resolution process is most likely to help a particular family succeed, thrive, and stay out of court, while using limited court personal and financial resources where they are most needed. Third-party neutrals, people with specific qualifications and skills suited to the process, work with families to resolve their disputes while helping them create healthy ongoing relationships that focus on the future. You could say this is an opportunity that’s in our families’ and our courts’ best interest. We believe it is also our responsibility.

**Endnotes**

1 “Night Prosecutor” programs for the resolution of minor criminal complaints began in Cleveland and Columbus as early as 1978. The Franklin County Municipal Court offered telephone and in-person conciliation in the early 1980s; the Pre-filing Mediation Program starting in 1988. All the mediators in this program are volunteers. Programs supported by the Supreme Court of Ohio began in 1991 and 1992 with the “Circuit Rider” project, which offered technical assistance to three municipal courts to replicate the success of the Franklin County Municipal Court Program. Parenting mediation began in the mid-1980s. Interview with C. Eileen Pruett, Supreme Court Commission on Dispute Resolution Member, Former Association of Family and Conciliation Courts (AFCC) Board Member, and Manager, Small Claims Division and Dispute Resolution Department, Franklin County Municipal Court, Columbus, Ohio (February 14, 2014) (notes on file with author).


3 See http://fourcountyadamhs.com/.

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