



On September 29, 2017, the Fourth Judicial District conducted a judicial listening session at the Division of Indian Work in South Minneapolis. The District's Family Court Enhancement Project addressed access to family court for Native American community members. The event entitled, "Judicial Listening Session – Meet with Judges and Court Staff in a Small Group Discussion about Domestic Violence," was designed for community members to talk with judicial officers about their experiences and concerns when accessing the Court.

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FOURTH DISTRICT REPORT

The goal of the Family Court Enhancement Project (FCEP) is to improve family court outcomes for domestic violence survivors and their children. One of the four objectives of the FCEP is increasing access for Native American survivors of domestic abuse in family court. The FCEP co-sponsored the event with the Division of Indian Work, the Native American Community Development Institute, and the Indian Child Welfare Law Center to help determine barriers faced by Native American survivors when seeking protection from the Court and law enforcement.

INTRODUCTION

On September 29, 2017, a judicial listening session convened in the heart of the state's most populous Native American community – Hennepin County. The event was held at the Division of Indian Work, 1001 E. Lake Street, Minneapolis, MN 55407, from 5:30 p.m. – 7:30 p.m. Invitations and flyers were distributed to key organizations as identified by the FCEP's Tribal and State Court Liaison, the Director of the Division of Indian Work, subcommittee 4 co-chairs, and community members; posted on the Minnesota American Indian list serve; and at key community boards in the Minneapolis area.

The purpose of the judicial listening session was to create a public forum for community members to describe their experiences and to discuss ideas for advancing equality and fairness when addressing the issue of domestic violence in family court.

Fourth District Session Details

60+ people were in attendance at this listening session.

Group Facilitators:

- Justice Anne McKeig (Minnesota Supreme Court)
- Judge David Piper (Hennepin County Juvenile Court)
- Judge Juan Hoyos (Hennepin County Criminal Court)
- Judge Kristin Siegesmund (Hennepin County Family Court)
- Judge Martha Holton-Dimick (Hennepin County Family Court)
- Referee Mike Furnstahl (Hennepin County Family Court)
- Referee Jason Hutchison (Hennepin County Family Court)
- Referee Mary Madden (Hennepin County Family Court)

Judicial Officers: 9 representing family, civil and criminal courts

Court Staff: 4

- **Small group co-facilitators - Judges were matched with community leaders:**
 - **Terry Yellowhammer, Attorney, Indian Child Welfare Law Center**
 - **Louise Matson, Director, Division of Indian Work**
 - **Shanah Regginti, Director of Programs, Division of Indian Work**

- **Marissa Carr, Program Coordinator, Division of Indian Work**

Community Representation: Ogichidaag Kwe Council, Native American Community Development Institute, Indian Child Welfare Law Center, Division of Indian Work, and City of Minneapolis

SUMMARY OF THE FOURTH DISTRICT SESSION

The goals of the listening session were:

- to provide an opportunity for community members to share thoughts, concerns, and experiences with the court addressing domestic violence;
- to hear from people who have interacted with the court system directly, or have friends/family that have interacted with the court system;
- to hear what is and is not working in terms of: perception of fair treatment, quality of service, and access; and
- to use what is shared to help the court ensure needs are met and that rights are respected when interacting with the judicial branch.

65+ community members attended the judicial listening session. The Division of Indian Work provided a meal for attendees, which is a cultural norm in the Native American community, and one of the main reasons why the turnout was greater at this listening session compared to the one offered previously. After introductions, co-facilitators divided attendees into 11 small groups with approximately six or more people per table leading to discussions at each table.

Major Themes of the Session

These major themes were identified:

1. Enhance Court Facilities

- Onsite support needed.
- Provide traditional Native American “smudging”¹ room available for parties.
- Offer Native American elder to be available for parties to consult with in monitored waiting rooms (MWR).
- There is a stigma about asking for help. It would be helpful to offer an advocate to be available, similar to how hospitals offer a Native Patient Advocate.
- The community appreciated Court in the Community when it was offered. The community would like to revisit the restorative justice model and bring back community court. It would be a good idea to collaborate with a drum group and invite community members to a meal.

¹ “Smudging” or “cleansing” is a ceremonial tradition many Indigenous peoples use for holistic purification of a person through the ritualistic burning of a small amount of traditional herbal medicine like sage, sweet grass, cedar or copal and fanning the smoke of the medicine to wash over a person to cleanse and assist them.

- **Environment/ Aesthetic:**
 - The Family Justice Center (FJC) is not welcoming.
 - The Domestic Abuse Service Center (DASC) is a nice model.

2. Outreach in Community

- Some people are unwilling to get an Order for Protection (OFP) because they are unfamiliar with the process and available resources. Education needs to happen before victims need protection.
- Generally people do not know about the FJC and the resources available.
- Provide a court outreach position at Little Earth United Tribes in South Minneapolis.
- Retain full-time permanent outreach person with the District to help community members navigate the court system.
- Target youth at schools and Little Earth for education about the court process.
- Create a position like a Guardian ad Litem in the community to support domestic abuse victims.
- Bring someone into the community to process petitions for OFP (like DASC in community).
- Provide resources to respondents for healing such as:
 - Culturally relevant batterer's intervention groups; and/or
 - Bring education to Court Watch at Little Earth.
- Provide more information about multi-jurisdiction issues and Public Law 280.
- Provide a link to a website that will explain what to expect when at court in domestic abuse hearings.
- It is important to provide information so that it can be accessed in a variety of ways. Community members have smart phones and youth communicate via Facebook/social media.
- Hold education events around current programs.
- Provide information for people who do not have questions, but may need information in the community and in jails.

3. Education for Judicial Officers and Court Staff

- Judicial officers and court staff need to understand mental health, addiction needs, especially the heroin epidemic because both parties might be addicted or have mental health issues and need services.
- Judicial officers and court staff need implicit bias and cultural competence training.
- Judicial officers and court staff need historical trauma, intergenerational trauma, and epigenetics training.
- How do we get judicial officers to understand when he/she is culturally removed from the community and situation?
- Concerns that the judicial officers may be hearing cases as victims or perpetrators.

4. Fear of Judicial Branch

- **Historical Trauma - abuse at boarding schools and foster homes:**
 - People are afraid to engage the system
 - Parents do not want to risk losing their children or not getting the relief requested
 - Loss of ability to be provider and protector
 - Need culturally specific resources for men to address trauma, and
 - Empowerment.
- **Extreme fear from recent sexual violence.**
- **People fear the child protection system.**
- **Address implicit bias.**
- **Need relationship building between the court and community.**
- **Parties feel intimidated to ask questions. They feel like they do not have a right to ask questions. Understand that everyone is not the same.**

5. Judicial Interaction

- **Non-native people fail to recognize the importance and significance of culture for Native people.**
- **Courts do not follow parties.**
- **Specific stories about Guardians ad litem (“GALS)**
- **Some participants provided their experiences with Judicial officer:**
 - The judge had good energy and demonstrated respect.
 - Judge understood what participant was going through.
 - Some participants felt rushed through proceeding and did not understand what is going on. They also did not know their rights or their options.
- **Victims do not feel confident that courts have capacity to really enforce the OFP & protect her/him.**
- **Court can be very intimidating especially the language used.**
- **It is hard for Native people to see themselves in court.**
- **Understand ways of communicating**
 - Silence is an act of communication and does not mean agreement. Native people tend to watch, listen, take-in information.
 - Many native people think circular and take things literally.
- **Victims come to court under stress/trauma; advocates help but may be better if victim has legal representation.**
- **Need clarification about what happened during the hearing, the decision, relief granted and the consequences for violation including implications with Domestic Abuse No Contact Orders.**
- **For some community members, discussions in chambers may be very helpful to disarm the intimidation factor.**

6. New Law/Policy/Practice

- **At birth, establish child support because people don't think to go to court until relief is needed. Be proactive instead of reactive.**
- **Is it possible to implement a Batterer's Intervention Program in jail?**
 - **Men need healing when they enter the system**
 - **Mending Sacred Hoop-Duluth model**
- **Can the public defender be used as a resource for outreach? However, there is an issue of the public defender making choices for the client.**
- **County Attorney training – e.g. where CA had more concern about blood alcohol concentration (BAC) of victim than rape of victim**

SUMMATION - Group Discussion Comments

Judge Piper's Group Discussion Comments:

- a. Dealing with courts and court staff – how did it make you feel to improve how we treat people?
 - a. Nothing much personal but with clients; to testify on behalf of the clients on efforts they are doing to turn their life around
 - b. Preparation is important so client is not scared or intimidated
 - c. Person prepped by lawyer, and walked client through process
 - d. People feel very nervous
 - e. She supports clients and tells judge about client's progress
- b. Cases with Judges in Child Protection. Concern about Judges:
 - a. We work in a system we don't believe in
 - b. System the other attorneys want to believe in the system, but gets screwed up by judges (ex parte communications), not responding to objections, and attitude.
 - c. Accusations that an attorney did not follow the law, then have to point out to the judge what the rules say. Unpleasant to have to point out those mistakes.
 - i. In family court, you look at both parents. In juvenile court, typically just one parent.
 - ii. Need education for judges on parental alienation
 1. There may be times a kid reports abuse and it is not true.
 2. Difficult area; judges tend to err on the side of caution
 - iii. Concerns about lawyer, ineffective assistance of council
 1. Someone lost or terminated parental rights because of ineffective assistance of counsel
 2. Cornerhouse is at question in training staff and interview tactics.

Judge Hoyos and Justice McKeig's Group Discussion Comments:

1. Learning to speak the same language as litigants is challenge.
2. Law provides 15 factors the Court has to consider in parenting time.
3. Factors, in the best interests, you take 1 or 2 of those, then don't have 50%. Women tend to not make same high income as men. Men can afford school district; mom has to move to different school district with a relative.
4. Parenting time. Litigant should ask – what do you want for me to get my parenting time? The litigant can ask this question.
5. Some women don't stay and feel they are not believed by the court. Coercive control and emotional abuse is an issue.
 - a. Important people can tell their story – he threatened, beat, intimidated me (AKM)
 - b. Judges going to advanced training. Including the power wheel
 - c. You should tell court, if no one tells the presiding judge, then write them a letter and say if there is a problem. Judges want feedback.
6. Judges do care about what is the right thing to do (Hoyos).
 - a. Important to check with litigant if decision is what they want to do.
 - b. Suggested we create feedback form that can be left at Family Court Self-Help Center about treatment received in Court.
 - i. Women afraid of judges, or if they talk it is ex parte communication. They can feel intimidated.
 - ii. 74% of litigants don't have lawyers in family court
 - iii. Advocates are working hard to help litigants.
 - iv. In family court, referees are equal to judges.
7. There are 12,000+ cases that go through FJC. The system is overburdened and that impacts the litigants. Community can talk to the legislature – they need more than 15 minutes of a judge's time.
8. Time with a judge is an issue – litigants need more time with the judge. District Court judges are working well beyond their means.
9. What happened to \$8 million dollars government gave to CPS? Social workers, county attorneys, but did not put more time for judges
10. More information needed to understand pressure put on judges

Judge Siegesmund's Group Discussion Comments:

1. Family needs jobs coming out of the system and court. Families need training in jobs. Put training and jobs, and people come out of child protection; they need jobs to be economically supportive of their children.
2. It's a matter of building, and duplicating, the circle.

3. Minnesota is #1 in the nation for removal of Native American children from their families – due to domestic abuse. Children can be removed because of domestic abuse.
4. Need to give Native Community an opportunity to continue this conversation, and more important to do something about it.
5. We need to think out of the silos; rather, we need to see how it is connected.
6. Need to consider prevention of domestic abuse, drugs, etc.
7. Working with children to explain to them anger issues and dealing with those issues. This is from the perspective of prevention.
8. Working at the Indian Center – court monitor, ICWA who observes. Her caption as to why there are so many problems with the county:
 - a. Some of it is judges and rotation – some are just in for 2 years. Don't know anything, and don't get training (her experience)
 - b. Problem with no expertise, no long-term commitments as JO's in child protection
 - c. ICWA specialist is only required 6 hours of training to become a "ICWA specialist"
 - d. How many referees come to ICWA education Day? Judges don't attend this.
 - e. Some people want to be judges and dedicate a specialty.
 - f. Difference between referee and judge – referee don't have to live in the county and they are hired (this is because legislature doesn't provide us enough judges)
 - g. Lot of other counties have no referees
 - h. Family court referees do pretty much what other judges do. Need more referees and judges – there are not enough.
 - i. Physical division (2 big computer monitors in front of judges on bench) blocks communication and vision.
 - i. Judges need to pull up cases on screen (everything electronic), but eye contact isn't happening, or it looks like they aren't listening. Traditional Native families – making eye contact can be considered to how a person was raised.
 - ii. Need more information on culturally appropriate services.
 - iii. Body communication (closed arms – very protective) and they are respectfully focusing on what is being said. Non-verbal can be interpreted differently and there are cultural differences.
 - iv. Peace maker traditions not necessarily appreciated.
 - v. They want the court system to respect their cultures.
9. How well do we meet the needs in family court?
 - a. Families that don't agree or have concerns about behavior sometimes can go to SENE. But there might be another ____ that Native people like. Like in Somali culture, there is a lot of work in cultures.
 - b. Is there a system that is more culturally appropriate to address issues like parenting time? Drinking around children?
 - c. Family court has all kinds of discretion to help families address issues.

Referee Furnstahl's Group Discussion Comments:

1. The person who controls this stuff is the judge.
 - a. Issue of changing rules?
 - b. Judges that are involved in domestic abuse should never be allowed to hear domestic abuse cases
 - c. Issue of ordering a polygraph – not appropriate in the matter
 - d. Needs to be a way to expose judges that do this type of stuff. Judges are appointed – no way public can know what a “bad judge” is
 - e. Judge convicted because of racial statements (Rapid City, SD)
 - f. They can consider filing an ethical complaint against the judge
 - g. Referee Furnstahl provided information as prosecutor experience and judge's employees – some are not so good
 - h. Bias important to keep in check – has no business on the bench. Some have “black robe” disease

Judge Piper's Group Discussion Comments:

There is a lot of discussion on juvenile court – too chummy and ex parte communications. Clients feel left out. Historical trauma training is needed. Litigant had a bench warrant – lost children in transfer of custody. In CHIPS, there is an allegation and needs to be followed-up on.

Suggestion: Texting about warrant needs to be taken care of. Court could improve notice by email or text.

Also issue of inpatient treatment, then bench warrant issued. She had 55th degree felony drug possession. This was supposed to be a reunification date? Need more communication on these issues when person is in treatment.

Suggestion: Establish review committee about removal of kids. Hennepin County is creating juvenile review team.

Referee Hutchison's Small Group Discussion Comments:

Not knowing where to go is an issue.

No real place to get simple questions answered.

Yes, you had an attorney. But no discussion or communication with that attorney until the last-minute. Attorneys get a lot of stuff wrong.

Difficult feeling the advocate is there for you, to trust them, figuring out what that is when you can't hire an attorney. Is the person who is supposed to be helping you actually helping you through/understand the process?

Need time to talk to the attorney and the judge. It is missed, and the legislature doesn't hear that, and don't know what your life is like. Community member(s) can let them know this.

How would it feel to have an elder at court? Would that bring comfort?

The elder can explain the process. Sit down with them about those questions, to be given the opportunity and smudge if they want.

Judge Juan Hoyos:

Family court issues don't have enough lawyers to represent people in Family Court. Restorative justice circles – court needs to engage the community more; court is engaged more with the families and community.

Elder went through boarding school, took grandchild who went on to college and speaks to ICWA working when child is with the family. Model can be similar to juvenile court to be helping mothers who need housing and support.

Suggestion: Need feedback for family court. More pre-court intervention so we don't have detention of youth. Help us understand how money is allocated. If the CHIPS case money is allocated to help family, grandparents, housing need help.

Housing is a big issue for reunification for families. They need that support to get them along before they can become stabilized. There are years of "wounded-ness" inside – will take more than a few months to get there.

Agencies do things that are contrary to indigenous cultures. HUD doesn't agree with this, and does not accommodate our community: Sees cultural differences as violating rules.

Judge Siegesmund's Table:

1. Warrants – sometimes get in the way of people making progress. When you do everything and something in the past pops up. Can there be a more holistic way to take care of this all at one time?
2. People could use assistance navigating through the system – intern, guide or advocate. The system is intimidating and they need help understanding. The SHC helps with forms, but not navigation.
3. Not sufficient expertise in rotation of Judicial Officers.
4. Empower parents to find their own solutions, but they need the tools to do it.
5. We should support community resources to help family to keep them out of the court system (i.e. Bright Beginnings) – issue of where resources are
6. Emphasis on knowing more about cultural differences; use of eye contact; how they sit and direct towards you is very important
7. Judicial officers need not be patronizing.

8. Community Members – once they have paid their debt, it is no longer there. Need to change that policy, and it still hasn't changed.

Referee Madden's Table:

1. Fear that domestic violence ever happened because of the repercussion of what could happen in court.
2. Minimizing impact of domestic violence on children and families
3. In family court there is a big push for settlement – stuck between a rock and a hard place. Domestic violence does not get adequately addressed.
4. Significant cultural difference between Native and White communities. Language, terminology, and concepts are all different. A huge barrier – to state court from native community to serve as communicator.
5. Concept of bias and rotation of judicial officers.
6. Does not want to get stuck with a judicial officer who doesn't understand domestic violence and its impact on kids
7. Judges need to read files before they get to the court room.
8. Pursuit of child support and adjudication of paternity is dangerous for a victim of domestic violence. Need to have discussion with the Hennepin County child support office.
9. Mediation – parents subject to domestic violence is under-represented, or an attorney forcing the victim into an agreement leaves her in miserable situation.
10. Victim blamed for reaching bad agreement – not accounting abuse
11. CPS and mothers in CPS are not getting recognized as both parent and child both experiencing trauma. Underlying trauma needs to be addressed.

Referee Furnstahl's Table:

1. Grandmother and Great-Grandmother raising grandchild; trying to adopt 4 ½ year-old, but ICWA is an impediment to adopt the great grandchild. She would lose her VA benefits.
2. Implicit bias by GAS an issue. Generally he adopts what the GAL tells him. Is therapist not truthful? No carte blanche of GAL recommends. Give reports for the therapist the Guardian ad litem needs to give the authority. GAL becomes advocate instead of the informant. That is what the judge tells them. But what he/she is hearing the GALS are acting as advocates, not what they need to be doing. This is a concern. Needs to put a stop to this.
3. Judicial Bias – fighting a year to get a child back, the GAL was very biased against her. The judge was a horror story – polygraph examination. Shocking to hear
4. Community member comment – she had to keep calling GAL and CPS workers. Some GALS work in Hennepin County

Community Member Comment: Really no way out. A person with a bench warrant, or a bias of GAL, was told not to go to Ramsey County because of too much bias and horror stories. Improve the GAL, no way out, no voice, no opportunity to speak. When they say something it is not true and/or they don't tell the whole story. You are left feeling helpless. Need an independent review.

Suggestion: People can go to Jill, the State Ombudsperson, for help

Judge Holton-Dimick's Small Group Discussion Comments:

1. Domestic Violence / DA court – helpful for judges and courts to know more about the native life / community
2. Deadlines to get things done in CPS cases, have to do them all by certain time. But it is hard to talk about behavior changes when they don't have housing, diapers, places to sleep, basic needs aren't being met. Courts need to understand the day and life of a community member.
3. Judicial officers are all different, and won't treat their cases the same.
4. Better training is needed with Judicial Officers in domestic abuse cases. They can sit down as a group so they can learn from each other to become more consistent in their cases.
5. Victims can suffer from misconduct of the other party.
6. Rotating judicial officers – new judges have to do specialty court for 3 years. Very difficult place to be in family court – mentally difficult. Very hard place to be. Judges need a break. Not friendliest place. Family law litigants are sometimes harder than criminal law litigants.
7. People having many problems with GAL. They need to be very focused on what the judges want them to do.
8. Unless child abuse, they can't appoint GAL. Let us know about the GAL.
9. Judicial system – need culture, what is the interpretation of family, belief – not a clear understanding of where they are coming from.

Community Member: What is the longitudinal impact on the victim? On the litigant? Useful exercise on how did things turn out? Judge Hoyos pointed out how many cases they have. Getting resources to the communities (and the courts) is very important.

Evaluations were able to be filled out. People are able to smudge. They want to encourage more judicial listening sessions – to try and continue. The GAL is under audit. Contact the GAL audit at the legislature.

There were a number of excellent suggestions made to improve fairness and equality in our court system. These themes fell largely into either the Court's ability to consider within the District or by referring the issue to the Judicial Council. Issues raised under the theme of New Law/Policy/Practice fell into another branch of government or agency.

The District may consider tapping into its relational network with other branches of government to appropriately address and influence issues under the theme New Law/Practice/Policy, to improve the meaningful response of our judicial system.

For each of the six themes, the FCEP Management Team reviewed the aforementioned comments, suggestions and proposals to inform priorities. After consideration, the FCEP Management team has tasked Subcommittee 4 with putting together a plan to address the concerns raised during this listening session. This includes engaging with court administration to work on enhancing court facilities, such as a designated space in Fourth Judicial District courthouses to smudge, which will be available to members of the public in the near future. Subcommittee 4 and the FCEP Management Team will also implement a sustainability plan with the concerns/suggestions shared during this listening session in mind.