

Working with Families in Conflict

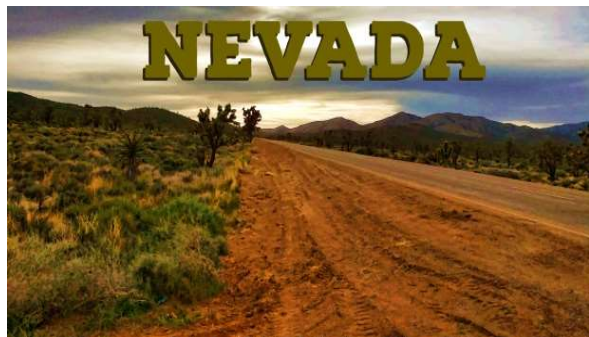
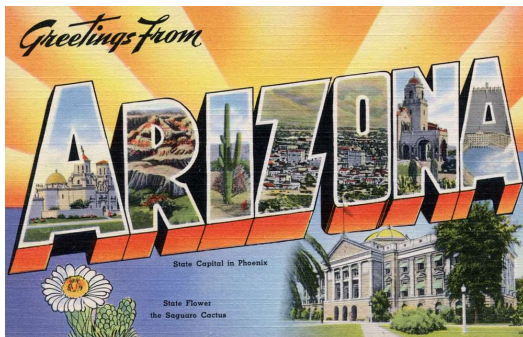
Hon. Bruce R. Cohen
Alicia Davis, J.D.

District Judges' Conference
April 9, 2024



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What we have in common



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“High degrees of conflict post-separation”

- Repeated Litigation
- Poor communication and cooperation
- Poor problem-solving abilities
- Frequent, diverse, intersecting access of multiple social service agencies including:
 - Mental health
 - Child Welfare
 - Legal Experts

(Rosenfeld et al., 2019)



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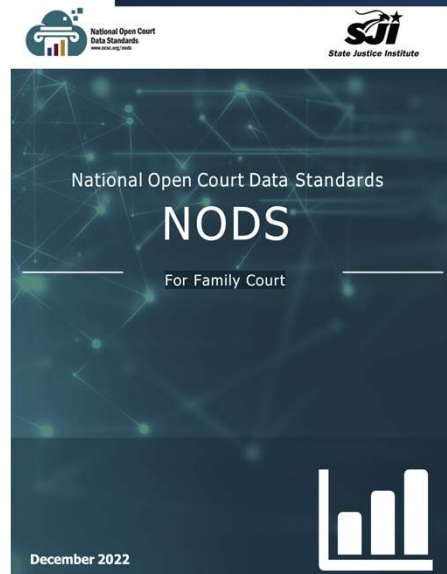
In your experience, how much has conflict increased in your cases in the last 5 years?

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Common Factors in High-Conflict Cases

- Division of Significant Marital Assets
- High-Conflict Personalities
- Domestic Violence Implications
- Multi-state or International Jurisdictional Issues
- Child’s Special Needs and Mental Health Issues
- Substance Abuse Impacts
- Cultural/Religious Considerations in Custody or Divorce
- Complex Financial Investigations



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From your experience, please rank these categories from most to least challenging.

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From your experience, are there any significant categories missing from this list?

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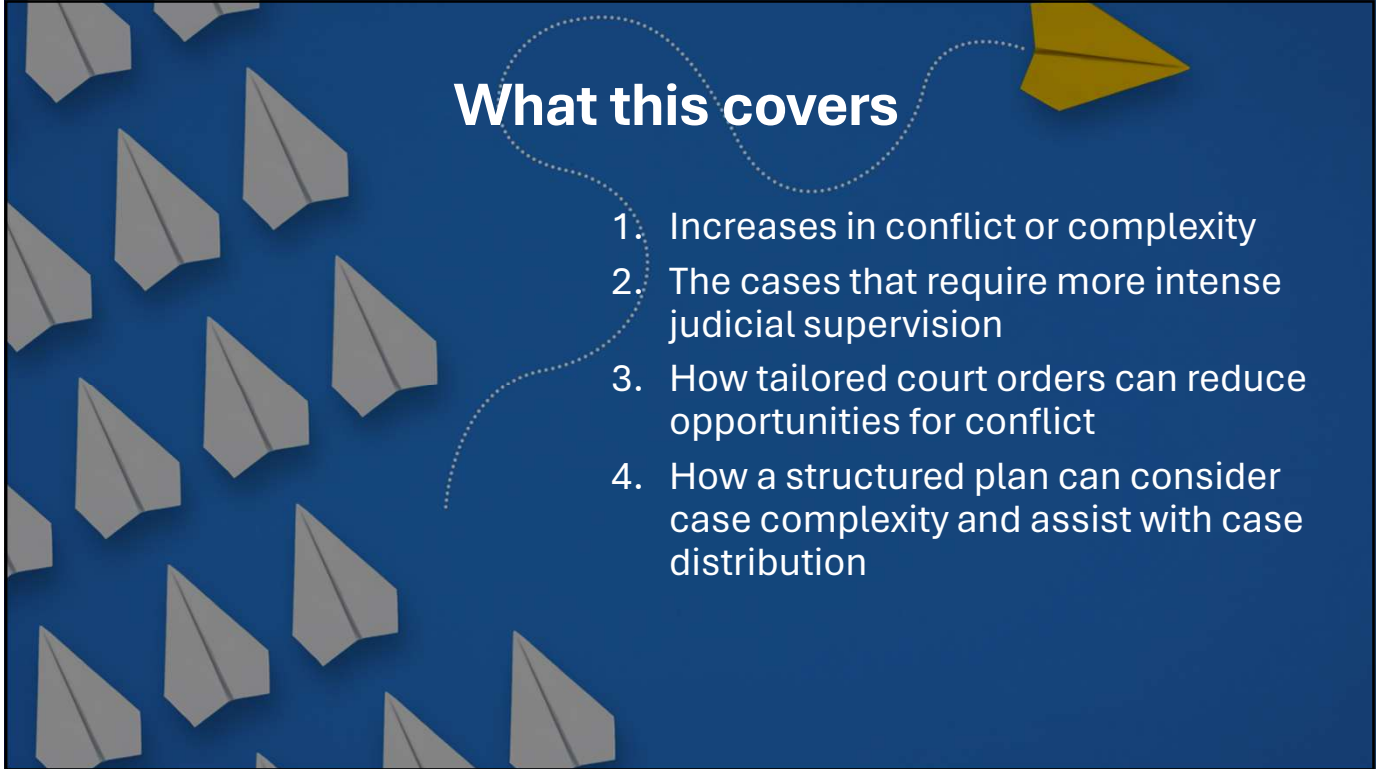
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Poor Outcomes for Children

- The best predictor of poor outcomes for children is high-level conflict between parents (Mitcham-Smith & Henry, 2007).
- Chronic conflict involving the court process, custody evaluations, parent estrangement, and hostility between parents can cause severe emotional and behavioral problems in children while eroding the relationship between children and one or both parents (Henry et al., 2009).




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What this covers

1. Increases in conflict or complexity
2. The cases that require more intense judicial supervision
3. How tailored court orders can reduce opportunities for conflict
4. How a structured plan can consider case complexity and assist with case distribution

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Families in Conflict impact every court


- Cases involving high conflict contribute significantly to judicial burnout and turnover
- Workload studies need to be updated
- Some estimate that high conflict cases are now 30% of the caseload
- Ballos, E.O. (2024). *Breaking Point: Navigating High-Conflict Divorces in Yuma County Superior Court* [Unpublished manuscript]. National Center for State Courts.

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A blue square icon with rounded corners. Inside the square, there is a white checkmark in the top-left corner, a white minus sign in the top-right corner, a white circle with a minus sign in the bottom-left corner, and a white minus sign in the bottom-right corner.

How do you currently determine which cases need your greatest attention? (select all that apply)

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The Levels of Marital Conflict Model (LMCM): A Guide to Assessment and Intervention in Troubled Marriages (Weingarten & Leas, 1987)



1) PROBLEM TO SOLVE
(STAMPERS)



2) DISAGREEMENTS
(CONTEMPLATORS)




3) CONTEST
(NUDGERS)



4) FIGHT/FLIGHT
(ENTRENCHABLES)




5) WAR
(INTRACTABLES)



The 5 Typologies

Dr. Michael Saini



- Dr. Saini has authored has over 50 publications in the area of high conflict, alienation, supervised visitation, virtual visitation and parent competencies post separation and divorce.
- Current research projects include:
 - exploration of high conflict families after separation and divorce;
 - parenting competency after separation;
 - virtual technologies and parent-child contact;
 - differential responses within family justice services;
 - supervised access and exchange services;
 - evaluation of family justice services; and
 - the intersections of child welfare and custody disputes.

Stampers: Education and Self-Help

Typology 1: Stampers

- Definition: Parties who have reached agreements but need court's register their agreement.
- Access to Justice Definition:
 - Parties who present with contents should be provided the court's services to finalize agreements.



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INTERACTIVE STATEWIDE SELF-HELP CENTER

Before You Head to Court

Learn About the Law

- Divorce
- Legal Separation
- Adoptions & Terminating Parental Rights
- Custody Paternity & Support
- Annulment
- Going to Court
- Other Topics
- Guardianship
- Name Changes
- Protection Orders

TIMELINES

EXPLAINER VIDEOS

ELIGIBILITY REVIEWS

GUIDED INTERVIEWS

CHATBOT

E-FILING

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Typology #2: Contemplators

- Definition: Parties who are looking for information regarding separation who are able to negotiate plans without the assistance of the courts but need direction and tools to come to agreements regarding disputes.
- Access to Justice Definition:
 - Parties have access to resources and information to empower them to make their own decisions and agreements outside of the court services.



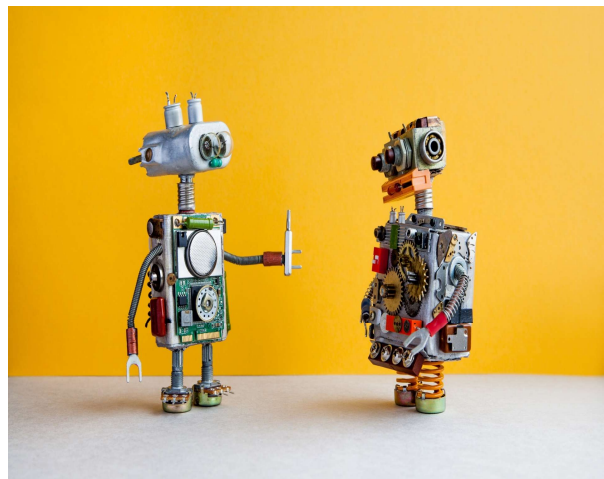
Contemplators: Parent Education, Schedules

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Nudgers: Status Conferences, ADR

Typology #3: Nudgers

- Definition: Parties who are generally able to resolve their disputes but need limited assistance from court services to help facilitate resolution and agreements.
- Access to Justice Definition:
 - Parties have timely access to resources and information to help facilitate quick resolution agreement.



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Entrenchables: Judicial Oversight

Typology #4: Entrenchables

- Definition: Parties who are moderately entrenched in positions regarding disputes but can benefit from specialized services geared at helping parties move from impasses to create resolution and agreements.
- Access to Justice Definition:
 - Parties are provided with tailored services that address the unique needs of parties to help them more efficiently resolve impasses.



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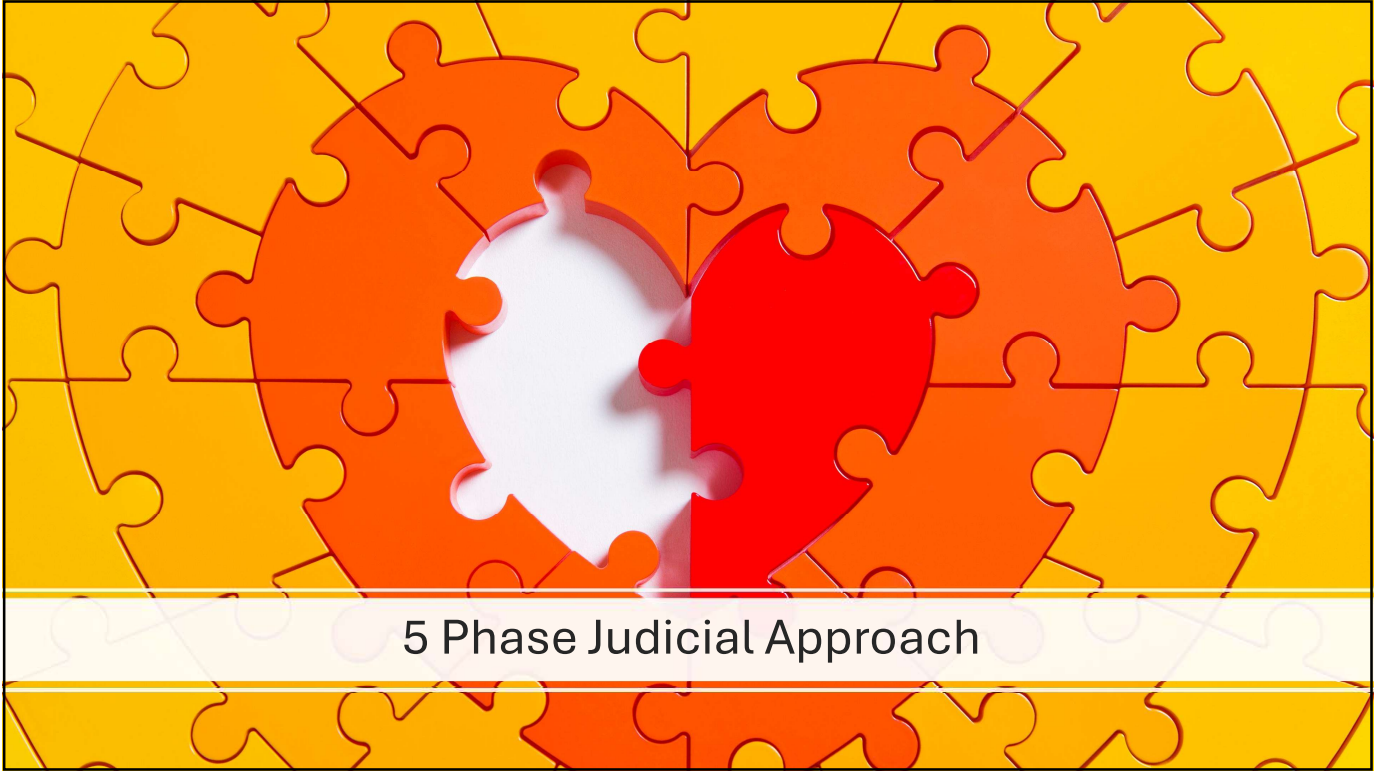


Typology #5: The Intractables

- Definition: Parties who are severely entrenched in dispute and/or exhibit several risks that would benefit from a social- legal interventions.
- Access to Justice Definition:
 - Parties entrenched in legal disputes are provided with specialized services that can more efficiently addresses and protects against risks factors that keep them in entrenched conflict.


Intractables: Intensive judicial oversight

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From your experience, please rank the relative effectiveness of these strategies in working with high conflict parties.

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Gaming the System


- Focus on reaching long-term life goals over legal wins
- Emphasize effective co-parenting, long-term financial planning over "equitability" and "best interests of the child"

Waldron, K., & Koritzinsky, A. R. (2019, August). A Game Theory Perspective: Three major weaknesses in the traditional family law system and ten tricks that promote divorce conflict. *AFCC eNews*, 14(8).

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Phase 1: Everyone gets the same information ...

- Parenting Time Brochure
- Court video
- Self-Help Services
- Guided interviews



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Phase 2: Assess the parties early

An assessment of family risk when entering the court process can result in the receipt of services, including prevention services, which could help resolve family issues as well as potentially expedite the child custody court proceedings for these (U.S. National Research Council, 2009)

- Hollis, J. (2018). Using a Risk Assessment to Predict Court Service Use in Custody Disputes. Walden University.
- National Center for State Courts (NCSC). (2023). Implications of Domestic Violence Within the Triage Pathways Approach in Connecticut.



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Phase 3: Parents in Conflict Education



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PILOT STUDY RESULTS

The Families in Transition Program (FIT)

OBJECTIVES
Comparison of two court-ordered parent education programs for high-conflict separated/divorcing parents.

- FIT: 90 minute, online program
- PCR: 4 hour, in person program

SAMPLE DETAILS

- Total Participants: 264 (214 completed surveys).
- Distribution: 56% took PCR, 44% took FIT.
- Gender: 51% women, 34% men, 1% other/not disclosed.
- Marital History: 43% never married to the child's other parent, 43% previously married, 14% did not disclose.


FIT FINDINGS
...AT A GLANCE

- Scalable, early intervention for post-separation/divorce conflict.
- Parents reported reduced parent conflict and child behavior problems in pilot testing.
- Ready for larger scale evaluation and refinement.

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Co-Parent Bill of Rights

Children First Always	Mutual Respect
Consistent Rules	Flexible Visitation
Time Consideration	No Negative Talk
Respect Privacy	Calm Discussions
Keep Adult Issues Private	Don't Test Loyalties



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Phase 4: Reduce the opportunities for conflict

- Are parties unsure of what the order says?
 - Do they disagree with it?
 - Are they knowingly violating the order?
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- Evaluate each order to reduce uncertainty, ambiguity, and enforcement issues.



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Phase 5: Case by case intensive oversight

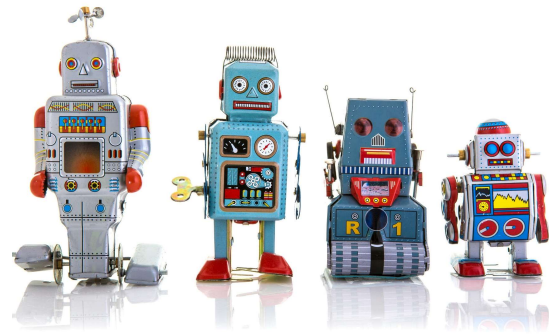
- Analyze where disputes are coming from. Are they schedule-related?
- Educational orders with homework assignments and a problem-solving court approach.
- Intensive oversight where for a period of time you schedule review hearings. Might be once a month or every other month.




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Review hearings and other tools

- Did parties comply with the schedule or vary? If the schedule was not followed, was it by agreement?
- Review parental communication, such as examples of emails where communication was appropriate (or not).
- Worksheet to talk about the strengths and weaknesses. Parties must supply an equal number. Only review the equal number.
- Medical or school issues that arose during the 60 day period and how addressed



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WHO WE ARE
WHAT WE DO
SUPPORT NCSC
🔍



🏠
Areas of expertise
Children, families and elders
The Cady Initiative for Family Justice Reform
Well-Being in Domestic Relations Court


Well-Being in Domestic Relations Court



"Promote the well-being of families, including implementation of trauma-responsive practices for families and staff, throughout the life of their case and as the primary desired case outcome." - CCJ/COSCA Resolution 4 (2020)

<https://www.ncsc.org/consulting-and-research/areas-of-expertise/children-and-families/fji-update/well-being>

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Analyzing and Addressing Complexity

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DATA



SORTED



ARRANGED



PRESENTED VISUALLY



EXPLAINED WITH A STORY



ACTIONABLE (USEFUL)



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What is effective in your jurisdiction in getting more judicial resources?

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BUILDING A BETTER COURT

Measuring and Improving
Court Performance and
Judicial Workload in Child
Abuse and Neglect Cases



NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

The American Bar Association, Center on Children and the Law

The National Center for State Courts

The National Council of Juvenile and Family Court Judges

National Council of Juvenile and Family Court Judges. (2005). Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases. NCJ 209553[<https://www.ncjfcj.org/wp-content/uploads/2012/03/Building-a-Better-Court.pdf>]

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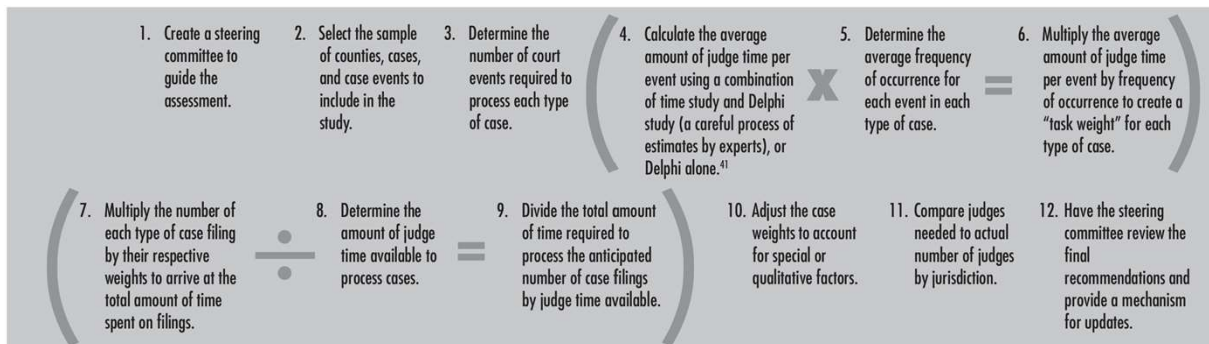
Two types of measurement activities are vital to court improvement:

(1) performance measurement to establish baseline performance, identify areas for reform, and chart their own progress in meeting deadlines and other goals, and

(2) judicial workload measurement in order to track the resources courts have and persuasively argue for what they need to make major gains in their performance.

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Creating a plan in your district



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In your experience, how would you rank the importance of these elements in determining the complexity of your caseload?

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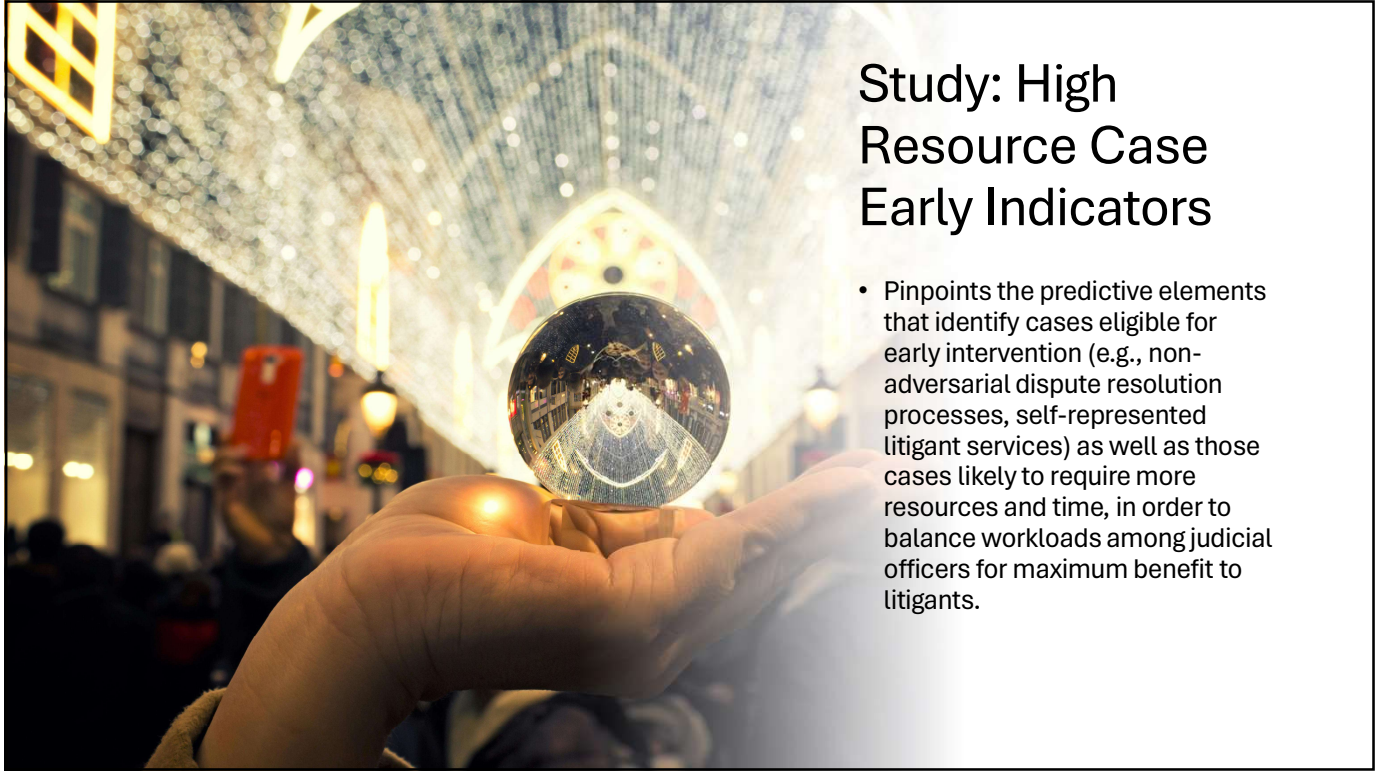
Conflict and Complexity Data Measures

A proxy measure for complexity is the number of events (hearings) required to resolve the case between filing and disposition. Another proxy measure might be the number of post-judgment hearings within 6 months of the original entry of judgment...

A proxy measure for conflict is the number of events (hearings) required to resolve the case between filing and disposition. Another proxy measure might be the number of post-judgment hearings within 6 months of the original entry of judgment.

Considerations for Family Justice Performance Measures, https://ncfsc-web.squiz.cloud/__data/assets/pdf_file/0014/19121/fji_performance_measures_considerations.pdf (2018)

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Study: High Resource Case Early Indicators

- Pinpoints the predictive elements that identify cases eligible for early intervention (e.g., non-adversarial dispute resolution processes, self-represented litigant services) as well as those cases likely to require more resources and time, in order to balance workloads among judicial officers for maximum benefit to litigants.

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Family Triage

Complaint for Divorce

This interview will guide you through the information needed to file for a divorce on your own.

You will be able to propose terms for the divorce in regard to:

- How any community property and debts should be divided
- Whether alimony should be ordered
- Whether you want a former name restored (if applicable)
- If you have children, your proposal for custody of the minor children, visitation schedules, and holiday visitation
- If you have children, your proposal for child support and who should provide health insurance for the children

[Continue](#)

Need help? Visit [Nevada's Self-Help Center](#) for additional resources, or use our chatbot.

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FOR MORE INFORMATION:

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