

## **APPENDIX**

### **Helping People Before the Court: Effective Triage as a Critical First Step**

When people first come in contact with the court, how their needs are assessed and how they are directed can significantly impact their experience with the court, as well as the court's ability to operate fairly and efficiently. Many times people are unsure or confused about what they need. Other times, they know what they need but have no idea how to accomplish it. Effective triage when people first come in contact with the court can help to direct them appropriately and ensure an efficient use of limited resources.

#### **Examples of Effective Triage**

Specific examples of effective triage in various types of cases include:

##### **❖ Name Change**

Someone comes to the court asking for forms to change a name. The first question to ask is whether it is to change the name of an adult or a minor. If the answer is "adult," then the next question is whether the adult wants to change her name to revert to a maiden name or prior married name following a divorce. If the answer is "yes," then the person can be directed to file the request in the original divorce case. If the answer is "no" the next question is whether the name change is to protect a victim of crime. If the answer is "yes" the person can be directed to the victim services unit of the local District Attorney's office. If the answer is "no," the person can be given the forms for a change of name for an adult and instructions on how to complete and file them.

If the answer to the first question is "minor" then another set of questions would follow. The person needs to be asked whether both parents are petitioning for the minor's change of name. If the answer is "yes," the forms can be given with instructions for their completion. If the answer is "no," the petitioning parent should be asked whether s/he knows if the non-custodial parent will consent. Since the non-custodial, non-petitioning parent needs to be served with the petition and order to show cause, if the petitioner cannot locate that person, it is possible the court may not be able to order the minor's name to be changed. In such case, the petitioner should be asked whether the minor will reach the age of majority soon, in which case the minor could, upon reaching 18, petition on his or her own without the need for parental consent or service of process on the parents. If the minor is still quite young, another question to ask the petitioning parent is whether he or she remarried, and if so, whether the stepparent might want to adopt the minor. The court cannot recommend a particular course of action, but informing people about their options and the consequences of each can help them make informed decisions and select a course of action most suited to accomplishing their goals. Without such information, people can easily pursue a particular court action, only to find at the end that it cannot accomplish their

goals, but that a different course of action could. This causes needless frustration and cost for both court staff and the people they are trying to serve.

#### ❖ Guardianship of the Person

A grandmother comes to court to request guardianship forms for the grandchild for whom she is caring. She indicates that she needs to enroll the child in school and therefore requires a court order for legal custody. Appropriate triage questions would help to determine whether an order for legal custody is necessary, and if so, whether the person is in the proper court. For example, if the grandparent is only going to have physical custody of the minor for a short time period, such as while the parent is on military assignment or incarcerated in the county jail, and the parent is otherwise fit to raise the minor, a Caregiver's Authorization Affidavit or Power of Attorney (minor child) may work to enroll the minor in school or authorize medical care. If, however, the parent may endanger the minor, the grandparent should be made aware that a court order awarding custody to the guardian is necessary to prevent the parent who would otherwise have legal custody from taking the minor.

Another question to ask is whether the proposed guardian is planning to stay in the county where the guardianship is being filed. If the guardian has imminent plans to move, it may be more appropriate to apply for a guardianship in the new jurisdiction, and use a Power of Attorney (minor child) or Caregiver's Authorization Affidavit until the move is complete. Of course, any situation in which the petitioner expresses a need for emergency orders to protect the minor need to be handled promptly by giving the additional ex parte or emergency forms needed.

#### ❖ Unlawful Detainer

Tenants coming to court in response to an unlawful detainer need to understand their options. A defendant can 1) file a responsive pleading within the time limit provided, 2) default, or 3) settle *if* the other side is willing. Having materials that explain these options and the consequences of each can help a tenant decide what course of action to take. It is also important to provide information about the types of defenses that may constitute a *legal* defense to the eviction. Many people are under the mistaken belief that the court can stop an eviction for non-payment of rent, simply because of economic hardship suffered by the tenant. They often expect the court to order the landlord to forgive the rent because the tenant was laid off, or because of catastrophic illness or injury. They do not understand that landlords cannot be required to subsidize a tenant's hardship, and that if the landlord is not willing to forgive rent, or allow more time to pay, the court must order the tenant to move out.

It is important that easy to read information be provided to tenants about the types of legal defenses available so they can prepare themselves to move if they do not have a viable legal defense. In those cases where tenants are able to demonstrate a viable legal defense, they may need to be directed to a local legal services or pro

bono program so an attorney can present their defense in court. This is particularly true when the other side is represented by an attorney.

❖ Family Law

○ Dissolution of Marriage

In order to be able to file for divorce in California, state law requires that one of the parties must be a resident of the state for at least six months and of the county in which the divorce is being filed for at least three months prior to the filing. Therefore, the first question asked of an individual seeking assistance with filing a divorce is the person's length of residence.

A second question, and of great importance, is whether similar proceedings have already been filed in another state or county. The first court to acquire jurisdiction retains jurisdiction over the matter, so the spouse who may otherwise be able to file in California may be precluded from doing so by the other spouse's previous filing.

A person who seeks assistance with a dissolution of marriage is often seeking to resolve an underlying issue of child custody/visitation and/or support. It is therefore important to determine what the party seeks to accomplish, because there may be limitations on what can be achieved in the divorce case. For example, a party seeking a divorce may find that the other spouse has insufficient contacts with the state to be able to obtain support orders. California may have jurisdiction over the issue of the dissolution of the marriage, but may lack personal jurisdiction over the respondent so as to preclude imposing personal financial obligations on that spouse. Thus a person seeking assistance with filing for divorce should be questioned about the other party's contact with the state. Additionally, if another forum has previously issued custody, visitation or support orders, it may have acquired original jurisdiction over the subject matter.

○ Child Custody/Visitation

Child custody/visitation orders may be issued under a number of different types of petitions. Therefore, a person seeking assistance in filing a divorce petition including a request for custody orders should be asked if there are any pre-existing custody orders. Once a state exercises jurisdiction over the subject matter it retains jurisdiction until a request to transfer to another jurisdiction is successfully made to court with original jurisdiction.

If there are no pre-existing custody orders then it becomes necessary to determine the residence of the children for the last 6 months, as well as for the last 5 years. The parent must be able to provide information as to the residence address and duration for that time period. The state in which the children have most recently resided for 6 months or more is often referred to as the home state of the children. Under most circumstances, this is the state most preferred to issue custody/visitation orders. This preference does not apply when custody/visitation

orders have previously been issued in another forum, in which case the person seeking assistance needs to be directed back to the original jurisdiction for modification or amendment of the prior order(s).

Petitions for dissolution of marriage, parentage or custody require, in companion forms, that the parent state the residence of the children for the last 5 years. This requirement helps courts direct jurisdiction to the venue most convenient to the parties. For example, if the children first lived in Oregon for 12 years, then in California for 7 months, and now back in Oregon for 4 months, California may direct the custody case to Oregon, even though California is technically the children's "resident state."

A court in whose jurisdiction the children are currently present may issue custody orders, however these are generally temporary and are for the purpose of allowing the petitioning parent to file a similar petition in the "home state" of the children, or to seek a modification of the pre-existing custody orders, usually in the forum that issued the original orders. It is necessary to ask the petitioning parent detailed facts to establish if such an interim order is necessary.

- Child Support

Child support orders may exist as part of a 1) petition for dissolution of marriage, 2) petition to establish parentage, or 3) petition to establish support. The latter is filed by the Department of Child Support Services. All of these petitions first must establish or affirm the legal relationship of the parent and child. If the individual seeking assistance is initiating a new petition then he or she must be asked to identify the other parent and the circumstances under which that determination is made. The person is first asked if there are any pre-existing child support orders. As with child custody/visitation, the forum that first exercises jurisdiction over the subject matter retains jurisdiction. Modification orders must be sought in the same forum. However, the Department of Child Support Services may elect to transfer the case to the forum where the obligor resides and may then seek to enforce and modify the orders.

If a person is seeking to modify an order it is important to ask about the income of both parties, as well as the custodial time that each party has with the children. This information is crucial in determining what a new child support amount would be. Other factors are also considered but none weigh as heavily as the income of the parties and their respective custodial time.

If a party is seeking to reduce his or her child support obligation because of a wage reduction, it is important to ask the cause of the reduction. The courts can "impute" income to a party in situations in which the party has voluntarily reduced his or her wages. This occurs when a party quits employment and/or does not reasonably seek new employment. A party is questioned as to the facts that produced a change in circumstances under which child support was previously ordered.

## **Delivery of Triage Services**

Effective triage should generally be conducted and/or supervised by experienced attorneys, especially in contested matters. While a significant amount of triage can be accomplished through self-help web sites, written materials, and basic information provided by court clerks, such non-attorney-supervised triage is generally limited to uncontested, non-adversarial types of proceedings. To the extent courts develop materials, or have self-help centers where information is transmitted, it is a good idea to have an attorney draft or edit the materials and oversee the manner in which information is conveyed to the public so the fine line between providing neutral information and private legal advice is not breached.

*Triage to direct folks to attorney for cases they cannot do themselves (med mal, etc)*

There are effective uses of triage in virtually every type of case or matter people bring to the court. The above examples highlight common types of matters, but proper triage, if used in a neutral, information-based manner, without advocacy or advice specific to an individual, can go a long way to ensuring that people have meaningful access to the court. As people can better access the court to achieve desired goals, and as expectations become more realistic, their trust and confidence in the judicial system should be strengthened.