

**Submission from Amen to the
Family Law Reporting Project Committee
January 31st 2009**

Amen recognises and welcomes the immense work and research done for the Family Law reporting Pilot Programme. Dr. Carol Coulter is to be commended for her dedicated attention to detail while carrying out this work and her research in the family law courts.

The published reports were an eye opener for people who, because of the ‘in camera rule’ were not aware of the decisions made by the courts. Publications, such as Family Law Matters, give a snap shot on how some cases were dealt with and the decisions made.

It is disappointing that the Law Reform Commission in 1995 entitled ‘*Report on the Family Court*’ and indeed the *sixth report of the Working Group on a Courts Commission* have not been adopted or implemented.

In 1999, Amen made a submission to the family law reform committee following the publication of ‘*Domestic Violence: The Case for Reform*’ outlining many points made in this report.

The following are the observations Amen would like to make regarding the recommendations of the Family Law Reporting Project Committee.

Recommendation 1:

The government should legislate to set up a family court division of the Circuit Court, based on a network of regional family courts in 10 – 15 centres which would hear family law on a full-time basis, each presided over by a Circuit Court judge who would be allocated to the family court for a minimum period of one year.

Amen agrees with this recommendation.

We agree that there should be dedicated family law courts in different centres around Ireland presided over by a Circuit Court judge but we recommend a minimum period of three years. This would decrease the number of adjournments granted and also reduce the cost to clients and the state.

Recommendation 2:

Each regional family court should have an information office providing information on all options available for the resolution of family law disputes; mediation facilities; an office of the Legal Aid Board; family support and child assessment services.

Amen agrees with this recommendation.

A major problem with the Courts system is the dragging on of cases in order to reach agreement. Some cases take up to five years to reach a successful outcome. This process is unsatisfactory and requires some type of mediation service to assist both parties in coming to a solution regarding property, financial support and custody of children.

The legal profession are seen by outsiders as one big *'happy family'* who will not challenge each other and instead will agree solutions that may not be in the best interests of both parties.

Realistic and unworkable proposals are often agreed with legal teams on the day and presented to Judges as a *'fait accompli'*. Undue pressure is often times put on clients to enter such agreements. Upon reflection, they are sometimes unhappy with such agreements. Maintenance Orders are often made with no realisation that one party may have to struggle in order to comply. Men often find themselves in a position that they have to hold more than one job in order to comply with orders from the court. One client from Amen has told us that the judge in his case said to him, 'You will have to work harder and see your children less' in order to pay maintenance.

On Monday 19th of January 2009, The Legal Aid Board opened an office in Dolphin House. This office will provide a service in relation to all District Court family law matters and is available to all people who are eligible for civil legal aid.

Recommendation 3:

Before a case can go forward for litigation, each applicant should undergo a minimum number of mediation sessions, where arrangements concerning the welfare of children are a priority. If parties agreed, mediated settlements could be brought forward for ruling by the court, thereby making them binding.

Amen agrees with this recommendation

More resources should be given to the *Family Mediation Service*. Mediation should be the first 'port of call'. The courts should be merely a process for rubber stamping agreements. A mediated settlement is much better than a settlement ordered by the courts. Each applicant should undergo at least three mediation sessions.

Presently there are only four full time and twelve part-time offices attached to the Family Mediation Service. Research has shown that mediation when properly resourced and accredited would be a good solution to family law. Nearly all issues in family law require the co-operation of both parties and therefore mediation would seem to be the way forward.

Mediators should offer an outreach service. This could involve holding clinics in family resource centres in various parts of the country. This would make the Family Mediation Service more accessible to clients

Judges should have the power to order that, where there is no agreement, the parties attend at least three mediation appointments before a decision is made in the courts.

Recommendation 4:

Cases that ended in a mediated or negotiated settlement should be separately listed and ruled. Consideration should be given to establishing a court of limited jurisdiction, presided over by the county registrar, who could rule such consent.

Amen agrees with this recommendation.

This would reduce the time that clients currently have to wait for their case to be heard and cut down on client costs.

Recommendation 5:

Case management should be built into the system, so that no case could be listed without all issues concerning vouching of affidavits of means, discovery, valuation of property etc. being dealt with. This should be done regardless of whether or not a family law division is established.

Amen agrees with this recommendation.

Work regarding affidavits of means, etc. could be done by court registrars. On any given day in the Family Law Courts, solicitors and barristers may have a number of cases listed for hearing. They are therefore only able to give limited attention to each specific case.

Recommendation 6:

In the meantime, a panel of judges, at Circuit and District Court level, with special interest in and aptitude for family law, supported by training as necessary, should be established, and they should be deployed on a rotating basis to hear family law in both jurisdictions.

Amen agrees with this recommendation.

More emphasis should be placed on training of Judges involved in family law cases.

They should also meet with various organisations such as Amen.

A number of retired judges have told us that they regret the manner they handled some family law cases and commented on lack of training.

One client told us that his case was adjourned for over two years and eight different judges dealt with the matter in this period and this caused his levels of stress to be greatly increased and this also placed an enormous cost to the State.

Recommendation 7:

The Court Service should commission or prepare comprehensive information booklets on the various options available for the resolution of family law disputes, including the option of alternative dispute resolution, and the reliefs available in the District and Circuit Court and how to apply for them. There should be uniform policy throughout the Courts Service on the assistance court staff can give to litigants in filling in family law forms.

Amen agrees with this recommendation.

There is a huge variance in the practices and attitudes of court staff in different court offices around the country

Recommendation 8:

The President of the Circuit Court should consider drawing up a Practice Direction requiring parties to undertake a given number of mediation sessions before a case is listed for hearing. Alternatively, a preliminary hearing before the county registrar or a judge could establish whether a case could be remitted for mediation, couple

with an order for disclosure of assets where this was an issue. No case should be listed for hearing until some form of mediation or negotiation has taken place.

Amen agrees with this recommendation.

Parties should undertake a minimum of three Mediation sessions before the case is listed for hearing in the Courts.

Recommendation 9:

The Family Mediation Service should be expanded and all family mediators subject to regulation with a national system of accreditation. The service should be linked more closely to the courts and linked in to collaborative law where appropriate.

Amen agrees with this recommendation.

Where a case goes before a Judge, one of the parties is sure to be dissatisfied with the outcome. This leads to further conflict. In many jurisdictions outside of ours, mediation is mandatory. The Family Mediation Service should be properly resourced and accredited to deal with the high volume of family law cases coming before the courts. They should also take into consideration the views of children over twelve years of age regarding custody and access cases.

Recommendation 10:

Mediators should inform clients who do not resolve all their differences in mediation of collaborative law as an alternative to litigation.

Amen agrees with this recommendation.

Collaborative law can be expensive on the parties and therefore prohibitive.

Mediation is the preferred option.

Recommendation 11:

The Rules Committee should consider the redrafting of the template for the Family Law Civil Bill, simplifying it and minimising its adversarial content, while ensuring that the legal rights of litigants are not compromised.

Amen agrees with this recommendation.

Some of our clients have stated that they have difficulty understanding the Family Law Civil Bill.

Recommendation 12:

The Courts Service centrally should obtain information on the length of the family law lists in each county and additional judges should be allocated to hear family law in accordance with established need.

Amen agrees with this recommendation.

A better effort should be made by the Courts service regarding the listing of cases. Sometimes parties have to wait from 10am until late afternoon or evening for cases to be heard. This causes undue stress and anxiety. Cases should be listed for morning and afternoon appointments so as to avoid long waits. Costs again are increased as solicitors and barristers are required to spend the day in court with their client.

Recommendation 13:

The family law list should be planned for a year ahead, and the judges allocated so that the same judge would hear adjourned cases.

Amen agrees with this recommendation.

One client told us that his case was adjourned for again and again for a period of over two years.

Recommendation 14:

Consent cases and motions should be listed separately so that days allocated to contested cases are devoted to such cases exclusively.

Amen agrees with this recommendation.

Recommendation 15:

County registrars should consider establishing a uniform policy concerning the length of the court day, with flexibility built in so that cases ready to be ruled can be finalised without the parties having to return for a second day.

Amen agrees with this recommendation.

Recommendation 16:

Case progression by county registrars should be put in place as soon as the draft rules have been agreed by the Circuit Court Rules Committee. In the meantime, information on the experience of the piloting of case progression should be circulated widely among county registrars, practitioners and judges, so that further pilots can develop.

Amen agrees with this recommendation.

The law society must ensure that the *Code of Practice for Family Law Practitioners* is strictly adhered to.

Strict parenting plans should be agreed by the parties through the mediation process. This will help avoid further conflict.

Access Orders should be enforceable and An Garda Síochána should have a Power of Arrest in the event of any breaches of these orders, as with orders relating to Domestic Violence. In a case of breaches of access orders, the Gardaí tend to tell clients to go to their solicitor or the courts.

Recommendation 17:

The case progression system should conclude with a written agreed statement for the judge, outlining what has been agreed and remains to be decided by the court. This would facilitate the production of written judgments, which could be collated and centrally filed.

Amen agrees with this recommendation.

This may help to speed up the process of judgments being written up.

Recommendation 18:

Consideration should be given to reducing the opportunities for delay and obstruction, including the front-loading of the costs of applications and the making of interim costs orders immediately executable.

Amen agrees with this recommendation.

Any party who delays or obstructs should be severely admonished.

Recommendation 19:

The Department of Justice, Equality and Law Reform and the Courts Service should give urgent consideration to setting up a court-based service which could provide expert and impartial advice to the courts on both the views and the welfare of children in family law disputes. Consideration should be given to expanding the role of the Probation Service to provide such a service.

Amen agrees with this recommendation.

Recommendation 20:

The Courts Service should consider the publication of an information booklet for lay litigants in family law outlining what to expect in court and explaining both how to make applications and how to respond to them.

Amen agrees with this recommendation.

All documentation and forms involving Family Law cases should be freely available on the Courts service website and in Family Law Courts with explanations on how to complete and where to lodge such documents. Sample forms should be available.

The distinction between the Circuit and District courts should be clearly outlined.

It is vital that there is continuity in all courts areas on how these procedures should be followed.

We have seen time and time again people not having the means to employ legal representatives and having to represent themselves. In some cases it is frowned upon by the legal profession when a person who is not legally represented tries to have a friend accompany him to court. Every effort should be made to facilitate parties who wish to have a person present for support purposes.

A clear explanation and the required criteria for such a person should be included in a booklet. There is a provision for this under Section 40(5) of the Civil Liability and Courts Act 2004, however, most of our clients would be unaware of this.

Recommendation 21:

The Court Services should initiate discussion with agencies such as MABS, the Legal Aid Board and the Family Mediation Service to consider increasing access to appropriate ancillary services for those coming to the District Court with family law disputes.

Amen agrees with this recommendation.

Posters and Leaflets for support agencies such as Amen should be prominently displayed in Family Law Courts. A central distribution service for the circulation of such materials should be established.

Recommendation 22:

The Court Services should establish a committee of judges and appropriate Courts Service staff to consider mechanisms for the recording and compiling of the reasons for the District Court decisions.

Amen agrees with this recommendation.

Resources and facilities should be made available to have a proper reporting structure in place so that the views of children can be taken into consideration when custody of the children is an issue. It should also be staffed with suitably trained people dedicated to this purpose. Recording of case proceedings would eliminate misunderstandings regarding judgements. It would also ensure that written documentation will coincide with Judges comments and remarks.

Recommendation 23:

The Government should consider making more resources available for judicial conferences and training, especially in the area of family law, to ensure that expertise can be developed in areas such as international law relation to children, and family and child welfare, and so that a judicial consensus can grow on the interpretation of Irish family law.

Amen agrees with this recommendation.

More emphasis should be placed on training of judges involved in Family Law cases in order to ensure continuity between judge's decisions nationwide.

Recommendation 24:

In relation to the cost of family law, the Law Society and the Bar Council should consider whether their guidance on fees is appropriate for family law, particularly in relation to the premiums on the value of the family home and the urgency of the matter.

Amen agrees with this recommendation.

Recommendation 25:

The practice of some judges of requiring an indication of what the fees in a case will be before making final financial orders should be considered as appropriate for a Practice Direction.

Amen agrees with this recommendation.

We also find that, in many cases, solicitors are still failing to provide an estimate of costs as legislated for in the Solicitors Amendment Act 1994.

Recommendation 26:

The Rules Committee should consider changing the rules to permit solicitor and client costs to be taxed by the county registrar; alternatively, the President should consider a Practice Direction that would include a routine order in family law actions providing for solicitor and client costs to be taxed in default of agreement.

Amen agrees with this recommendation.

Recommendation 27:

The Government should consider abolishing or expanding the income limits for civil legal aid, combined with increasing the amount payable by clients to the amount normally paid to solicitors dealing with family law for the Legal Aid Board in the Private Practitioners Scheme, as the most cost-effective way of providing an enhanced service.

Amen agrees with this recommendation.

The conditions and income limits for awarding Legal Aid should be revised so that more people involved in Family Law disputes can access the service. Parties involved could be required to pay a portion of the costs depending on a means test.

Further points

- When cases are listed for hearing in the Circuit court for instance, negotiations take place on that day between the legal representatives. This is unsatisfactory for most people because it is always rushed and not properly thought out. Decisions are often made in haste with no time or concern for all the issues. A structure should be put in place to eliminate this practice.
- Adjournments can be detrimental in family law cases. This can result in the father being unable to have access to his children for weeks on end until the court makes its final ruling. This can also cause financial hardship.
- Where there are disputes regarding custody of the children, the courts will often be delayed, awaiting reports from the HSE, child psychologist or psychiatrist. This is another expense to the family. The courts should set a time for the completion of such reports and so avoid adjournments and increased costs.
- While awaiting these reports, other decisions have to be made and agreed by both sides. Occasionally the party who is not residing in the family home will have little or no access to children. A rigid Interim arraignment should be laid out so that there is no misunderstanding in relation to access and other matters. There should be stiff penalties for those who breach such orders.
- The Gardaí have powers and polices in place to deal with matters where breaches of Protection, Safety and Barring Orders are in place. They do not however have any policies for dealing with breaches of Access Orders which create a lot of problems for concerned parties.
- Often the satisfactory outcome of a disputed case is dependent solely on reports and there must be more resources available to the HSE in order to complete the reports in a timelier manner