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# The Early Resolution Program: Observations and Assessment

A Report by Chicago Appleseed Fund for Justice  
and the Chicago Council of Lawyers  
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## Background and Objectives

Each year, over 30,000 new cases are filed in the Cook County Domestic Relations courts, with many of the litigants self-represented. Family law cases can take anywhere from six months to two years or longer to resolve, with resolution tending to be much more difficult for *pro se* litigants. Launched in October 2018, the Early Resolution Program (ERP) was designed to reduce docket congestion and remove barriers to justice for litigants without representation in the Domestic Relations Division, which hears matters related to divorce, child support, and paternity determination among other issues. The goal of the program is to simplify the court process and shorten the amount of time from the date of filing to case disposition. This, in turn, should reduce the costs on unrepresented litigants associated with multiple court visits, hearings, and case processing steps. The ERP strives to meet this goal by allowing *pro se* litigants that meet certain criteria the opportunity to meet with hearing officers for case management prior to being seen before a judge.

There are currently eight hearing officers at the Daley Center. Hearing officers typically meet with litigants at the request of judges to assist with settling financial matters (for example, child support) or specifying settlement details in a proposed judgment (for example, the parties intend to divide debts but did not memorialize that plan in writing). The hearing officers hear cases, take testimony and evidence, and make recommended orders to the judge presiding over the case. Similar to judges, they sit impartially and follow the rules of evidence and rules of discovery. In recent years, the hearing officers at the Daley Center have undergone mediation training as their role has changed slightly from a focus on litigation to a stronger focus on case management, screening, explanations of the legal process, and mediation. The key difference in the role of the hearing officer since the implementation of the ERP is that they are now the parties' first point of contact with the court (apart from filing). The ERP assigns hearing officers the roles of assessing a case in its early stages and, if appropriate, creating proposed judgments before it is heard in front of a judge.

## Program Design

### Invitation

The Presiding Judge's office selects *pro se* cases to be called to the ERP. Both the petitioner and the respondent will receive an ERP "invitation" in the mail. The letter schedules a triage appointment date and time within 3-4 weeks of filing and explains that the ERP will help assess the best path for the case leading to a more efficient resolution. The invitation instructs the parties to disregard the notice if either litigant has obtained counsel. It also encourages the parties to speak with each other, if possible, regarding any potential issues that will need to be resolved such as: allocation of parental decision making, visitation, child support, maintenance, and division of property or debt.

### The ERP Appointment

All litigants who appear for their ERP appointment participate in a triage meeting. At triage, a hearing officer determines the appropriate pathway for the case. The triage officer may decide to keep the case in the ERP, meaning that litigants will receive assistance preparing proposed judgments. Otherwise, the case is redirected out of the ERP program and back to the regular calendar.

### ERP Appointment Part I: Triage

Once the parties or party arrives at the courthouse, court staff performs a screen for any interpretation needs and past/current domestic violence incidents or concerns. If a case is flagged for domestic violence, the two parties will see the triage officer separately and the case will subsequently be returned to the judge's regular calendar.

The triage officer will meet with the parties for approximately fifteen minutes and explain the goals and processes of the ERP. According to the initial ERP design, the triage officer would set a case on one of the four pathways described below:

1. *Prove-up readiness.* A case is ready for prove-up readiness if one party is present, service has been completed, and the case will likely result in a default judgment, or if both parties are present, self-represented, and have prepared proposed judgments in which agreements have been reached on all major issues.
2. *Follow-up with a hearing officer for prove-up readiness.* A case will be sent for follow-up with a hearing officer—often the same day—if there is only disagreement on financial support matters or division of property and there is no genuine issue relative to the allocation of parental responsibilities or parenting time.
3. *Resolution assistance program (RAP).* A case will be sent to the RAP if parties would benefit from the advice of counsel and are willing and able to cooperate with each other to reach an agreement. This program has not yet launched as part of the ERP.

4. *Return to the regularly assigned calendar for traditional adjudication.* A case will be returned to the regular calendar if: there are any domestic violence concerns or DCFS involvement, either party retained an attorney, or there are genuine and meritorious legal disputes or complexities at issue that require litigation before a judge.

## ERP Appointment Part IIA: Meeting with hearing officer to prepare proposed judgments

The purpose of the follow-up meeting with a hearing officer is to prepare or perfect proposed judgments for the Judge to review. In theory, this hearing should resemble one that a judge has ordered. The only aspect unique to the ERP program is that the hearing takes place before the litigants have appeared in front of a judge. This meeting can take anywhere from 30 minutes to two hours, depending on the complexity of the case. The hearing officer will hear testimony, make factual findings, and write proposed orders based on the details provided by the litigants. The hearing officer will also prompt discussion between the parties and provide neutral explanations of the law as appropriate (for example, what maintenance is and when it is appropriate, or how the guidelines for child support work based on income and parenting time). The officer makes factual findings, but the parties must both explicitly agree to any terms included in the proposed order. If parties can come to an agreement on each issue, they will leave the meeting ready for prove-up and court staff will assign a prove-up date before a judge that suits the parties' availability.

## ERP Appointment Part IIB: Meeting with pro bono attorneys

The Resolution Assistance Program (RAP) has a very similar goal to the follow-up meeting with a hearing officer. The RAP was intended to use pro bono assistance to help parties reach an agreement and memorialize that agreement before they appear in front of a judge. As this program is not launched, the details have not been completely fleshed out, but one possible version would assign each party a pro bono attorney for discrete, one-day representation. Attorneys would help parties identify and advocate for their best interests while also moving toward a compromise with the other party. As it was originally designed, the RAP would run on Thursday afternoons, so if a case appeared for the ERP and was triaged to the RAP, the parties would be scheduled to return on a future Thursday afternoon.

## Observations

Chicago Appleseed staff observed the ERP pilot program in the Daley Center on Tuesdays and Thursdays in May and June of 2019. In those eight weeks, litigants from 92 cases appeared for their ERP appointment (this accounts for approximately half of the total number of cases “invited” to ERP for those weeks). Appleseed staff observed the ERP triage and meetings with hearing officers, as well as prove-up

hearings for some litigants who remained within the ERP program. Appleseed staff also interviewed hearing officers, Domestic Relations staff, and litigants about the program. Finally, Domestic Relations gave Appleseed access to reports and orders from the ERP program, as well as the Division's summary statistics for ERP since it launched in October 2018. This section will first highlight key differences between the way the program was designed and the program that Appleseed staff observed, followed by an in-depth description of the program as it currently exists. The section then summarizes initial feedback from litigant participants and finally, it reviews some summary data on the ERP cases from May and June of 2019.

## Key differences between the program as designed and the program as implemented:

- The Resolution Assistance Program has not launched. No pro bono attorneys are involved in the ERP at the Daley Center.
- Pathways 1 and 2 have essentially collapsed into one pathway in which the case remains with a hearing officer to prepare or perfect proposed judgments. If a triage officer judges a case to be completely prove-up ready (i.e. it doesn't need the follow-up meeting with a hearing officer), the case will be directed back to the regular calendar.
- When litigants arrive in CL-24, the domestic violence screening only entails asking about orders of protection. The more in-depth DV screening questions included on the "ERP Triage Script" are not asked.

## Descriptive Account

The ERP setting is relatively informal. It takes place on the concourse level of the Daley Center, so participants go through security on their way to CL-24, where the hearing rooms are located. When they arrive, participants sit in a spacious and generally quiet waiting room. Eleven cases are called for each time slot—the first is at 12:15, the second is at 2:15. Participants could wait for up to an hour to see a triage officer, but generally the cases move faster than that.

ERP participants first check in with front desk staff. There are 2-3 court staff at the desk, plus the attorney staffing the parentage & child support help desk. When parties check in, the front desk staff screen for interpretation needs, orders of protection, and DCFS involvement. When there is an order of protection, the litigants will see the triage officer separately. Otherwise, staff will flag any issues by putting a small sticky note on the file to alert the triage officer. There is currently not a more extensive screening process for domestic violence beyond checking for orders of protection.

Parties sit down in a waiting area with ample seating. The ERP participants appear to be the majority of people waiting, as there are usually fewer than 10 people in the waiting area. The space is clean and orderly.

When a meeting starts, the triage officer comes out to the waiting area, receives a file from the front desk staff, and calls the parties' names. She then brings them to her hearing room and offers them a

seat. The hearing room is also clean and orderly: in a small, well-lit room, there is a raised seat and desk for the hearing officer, and 4-5 chairs around a table for litigants to sit at. There are a number of forms organized with folders and paper clips, plus pens and calculators on the desk for litigants to use. The hearing officer's seat is raised, but sometimes the officer will come to sit next to participants so that they may review paperwork together. These meetings with hearing officers are off the record; participants are not sworn in.

First, the hearing officer gives a brief introduction to the ERP program. She clarifies that the point of this program is to see what's going on with the case and make some recommendations about next steps; it is not a hearing where anyone is testifying, and she is not representing either party nor will she give any legal advice. The parties will not see a judge today or get divorced today; the point of the meeting is just to help make the case go as smoothly and efficiently as possible. The hearing officer then explains that she will look up the parties' case to see what's been done so far. In any meeting, the triage officer will ask questions to ascertain whether there are issues regarding minor children, marital property and debt, or maintenance. However, she will tailor her questions and recommendations based on who appeared for ERP and whether the respondent has been served.

The atmosphere during the meeting is informal, but there is generally minimal arguing between parties or between parties and the hearing officer. Parties answer questions and sometimes follow up with a few of their own—the general feeling is that the parties understand what the meeting is for and they aren't trying to get the hearing officer to “side” with them. If two litigants start arguing over an issue, or if a party starts providing excessive information, the officer will reroute the conversation back to her screening questions. Some litigants appeared overwhelmed by the forms, had limited literacy, or had trouble keeping track of their next steps (even with something like filing an appearance). On occasion, parties appeared nervous or frustrated, but the hearing officers try to cultivate a friendly and encouraging atmosphere. For example, one participant came into the triage meeting somewhat agitated, but the hearing officer assured him that although divorce is difficult, in his case the legal steps would be straightforward and he was “doing everything correctly.” The participant clearly relaxed and even made a couple jokes at the end of the meeting. Another participant asked at the beginning of the meeting if it was okay for him to stand, as he was experiencing back pain. The hearing officer said that was totally fine, and he could “do whatever makes you feel comfortable.” One other participant started filling out a motion and appeared anxious about doing it correctly. The hearing officer assured her, “There's no reason to be nervous... think of it as doing paperwork... if you get confused come back and see me.”

After this initial discussion with the parties, the hearing officer makes the decision about where the case should go next (as long as petitioner appeared; if the respondent appeared without the petitioner, the ERP program can't schedule any future hearings for the case). Although the program was typically set up with four pathways, triage officers confirmed that Pathway 1 and Pathway 2 are essentially collapsed into one category. Pathway 3 (the Resolution Assistance Program) is not running. As a result, there are functionally only two pathways: (1) follow-up with a hearing officer to prepare the proposed judgment or (2) return to the regular calendar. The case is returned to the regular calendar for a variety of reasons including: any DV concerns, protective orders, or DCFS involvement; either litigant being represented by an attorney; or the presence of a genuine contested issue affecting the outcome of the proceeding. Otherwise, generally, the litigants stay within the program for further case management with a hearing officer.

When the hearing officer makes her determination, she asks participants to have a seat in the lobby, and then she writes up a brief summary for the judge or hearing officer who will see the case next. She brings this out to the front desk, and then the front desk staff assign a hearing date or get the litigant(s) set up with a hearing officer. If the parties are going to see a hearing officer that same day, they might wait ten minutes, or they might wait for over an hour. It depends how busy the hearing officers are with non-ERP cases.

As described above, the follow-up meeting with a hearing officer would ideally resemble a hearing ordered by a judge. One key difference is that ERP litigants are typically more disoriented and may need more extensive explanation of the hearing officer's role and the meeting's objectives.

## Participant Feedback

Participants generally reported that they had no particular expectations coming into the program. For the most part, parties appeared to be fairly neutral about the triage meeting, which makes sense considering that there is no immediate outcome. A small number left the triage meeting feeling that they had wasted time (in one case, participant had appeared as respondent's next-of-kin, so there was not much for the triage officer to do; in another case, the petitioner was convinced his spouse was in default but the record was showing that his spouse hadn't been served yet, and that misunderstanding was difficult to resolve). However, other litigants were clearly appreciative of the information and assistance they received during the triage meeting.

Participants who prepared proposed judgments with a hearing officer had neutral to positive reviews of the process. Litigants seemed to understand that they made forward progress on their case, and they knew their immediate next steps (generally some kind of filing). It would be useful to continue gathering feedback from ERP participants, but interviewers should ensure that the survey takes place in a room without the hearing officer. It also might be useful to try to follow up with ERP participants after their case has closed, but the logistics of such a survey might be prohibitive.

## ERP Data from May and June 2019

<b>Who appeared for ERP</b>	
Both petitioner and respondent	40
Petitioner alone	33
Respondent alone	6
Unknown	2
<b>Total</b>	<b>92</b>

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<b>Was service complete before ERP triage?</b>	
Service	25
No service	61
Unknown	6
<b>Total</b>	<b>92</b>

<b>Who appeared for ERP / Had respondent been served?</b>					
	Petitioner appeared alone	Respondent appeared alone	Both parties appeared	Unknown	Total
Respondent served before ERP	10	1	13	1	25
Respondent NOT served before ERP	32	3	26	0	61
Unknown	2	2	1	1	6
<b>Total</b>	<b>44</b>	<b>6</b>	<b>40</b>	<b>2</b>	<b>92</b>

<b>Pathway after ERP Triage</b>	
Hearing officer (same day)	25
Hearing officer (scheduled for future date)	21
Returned to regular calendar	40
Other (case changed venue, etc.)	4
Unknown	2
<b>Total</b>	<b>92</b>

Additional summary numbers:

- **45 cases** involved **minor children**
- **34 cases** were **simple divorces** (no minor children, no marital property or debts, neither party requesting maintenance)
  - In 10 of these cases, both petitioner and respondent appeared.
  - In 23 of these cases, only the petitioner appeared. In 16 of those 23 cases, the respondent had not been served (many of these petitioners left ERP planning for motion to leave to serve by publication).



- **19 cases** where petitioner left ERP intending to motion for leave to **serve by publication**. In 2 additional cases, the respondent had already been served by publication.
- **40 cases** were returned to the regular calendar after triage:
  - **14** petitioners planning to serve by publication
  - **7 cases** with **orders of protection** or testimony suggesting **domestic violence**
  - **3 cases** with **DCFS** involvement
  - **3 cases** where a party retained an attorney
  - **2 cases** that would be dropped/consolidated
  - **1 case** prove-up ready
  - **9 cases** returned to regular calendar for adjudication on meritorious dispute
- **7 cases** where at least one party needed an **interpreter**
- At least **2 cases** where **respondent was incarcerated** outside of Cook County

## Troubleshooting and Recommendations

The ERP undoubtedly benefits some *pro se* litigants. For parties with simple divorces and for parties in agreement on all issues, the ERP assists litigants with preparing clear and complete documents to be reviewed by a judge. On the other hand, not all cases are appropriate for the program, and there is a limited amount of screening that the court can do prior to the ERP triage appointment. The reality is that if cases are selected for the ERP based on clerk records alone (typically the petition for dissolution), full information about each case will not be reliably available. As a consequence, ERP staff encounter a wide range of divorce cases. Technically, any case that could appear in front of a judge could appear for the ERP. Now that the program has been running for several months, the Court can revisit the following issues:

- *What are the types of cases, or case features, that are appropriate for the program and its various pathways? In particular, when is it appropriate for a hearing officer to create a proposed judgment, given that a judge has not yet heard the case?*
- *How does the program screen actual cases to make sure the program serves the “right” cases?*
- *Should the Resolution Assistance Program (RAP) be implemented, and if so, what would it look like?*
- *What are best practices to ensure the ERP benefits litigants and respects their due process rights?*
- *Are there other ways the program might be more efficient and effective?*

## Which cases should appear for an ERP triage meeting?

There is an argument to be made that any case involving *pro se* litigants could benefit from a triage meeting, if only to orient the litigants to the court process and provide resources. On this theory, the only case disqualified from triage is one where one or both parties have retained an attorney. However,

past or current domestic violence will almost certainly make a triage meeting more trouble than it's worth, if not counterproductive and/or harmful to participants. Therefore, attorney representation and domestic violence should disqualify cases from receiving an ERP invitation.

A more conservative approach might exclude cases where service hasn't been effected. However, the ERP has potential to be useful to litigants who are unfamiliar with the various options for service and filing an appearance. For example, a petitioner who cannot locate their spouse can learn about service by publication, or a respondent who has not been served can learn about the option to file his own appearance. Appleseed recommends calling cases for triage without regard to the status of service. However, it would be good to establish clear procedures for the triage meeting based on which litigants appear and the status of service, in order to observe all participants' due process rights.

A more conservative approach to inviting cases to the ERP might also exclude cases involving minor children, on the theory that parents often disagree on allocation of parental responsibilities (APR) and hearing officers are not equipped to resolve such disputes. However, there are situations where parents have reached an agreement on APR, and the ERP can be very useful for these litigants. Given that minor children and similar case features will not always be included on the petition for dissolution, it probably makes the most sense for the program to be prepared to handle cases involving minor children. However, the program might consider prioritizing cases without minor children, at least while the RAP program is inactive.

Screening prior to the triage meeting can happen in three phrases:

1. *Selecting cases to receive the ERP invitation*
  - a. Cross-check for past, current, or pending orders of protection, both civil and criminal
  - b. Check that no attorney has filed an appearance in the case
  - c. Potential other criteria to bring in cases that ERP is most likely to benefit:
    - Prioritize cases where at least one party currently resides outside of Cook County. The ERP may be able to reduce the number of times parties have to travel to the Daley Center.
    - Prioritize cases where the petitioner did not include the respondent's address. If the petitioner who does not know where to locate respondent, the case could be a good candidate for service by publication
    - Prioritize cases without minor children listed in the petition for dissolution
2. *Litigants' self-screening when they read the ERP invitation*
  - a. Retain the instructions to disregard the notice if parties have obtained representation
  - b. Make the DV self-screening language more prominent. Perhaps even include a one-pager with DV resources.
3. *In-person screening when litigants check in at CL-24*
  - a. The in-person DV screening process is currently just a verbal check for orders of protection. This screening should be more extensive (as was originally intended) and it should take place in a private room.

## Which cases should proceed to a meeting to prepare proposed judgments?

Certain cases are clearly appropriate or inappropriate for a follow-up meeting with a hearing officer to prepare a proposed judgment. For example:

Appropriate for HO to assist with proposed judgment	NOT appropriate for HO to assist with proposed judgment
<ul style="list-style-type: none"> <li>→ Both parties appear for simple, uncontested divorce</li> <li>→ Parties appear together with a clear agreed-upon plan</li> <li>→ Petitioner appears alone and respondent is in default (including service by publication)</li> </ul>	<ul style="list-style-type: none"> <li>→ Domestic violence</li> <li>→ DCFS involvement</li> <li>→ Attorney representation</li> <li>→ Disputed paternity</li> <li>→ Petitioner appears alone and respondent is NOT in default (but petitioner may return to ERP when respondent is in default)</li> </ul>

The more difficult case to triage is one where both parties are present for the ERP, but they fall short of a full agreement. On occasion, parties will have completely opposing positions (e.g. one parent wants to move the child to Georgia; the other parent wants the child to stay in Chicago), and the case is clearly suited for traditional adjudication. However, there is a large gray area between the case where parties come to the ERP with a memorialized agreement and the case where parties definitely need a judge to make findings and decide the case. For example, Appleseed observed the following situations:

- Parties come to the ERP with a general idea of what they want to do, but no specific plan. In other words, it's not so much that the litigants disagree on an issue; it's more that they don't know how to translate their plan into a proposed judgment. Perhaps they're not even aware of every issue they have to address, but if asked directly, they could agree on an answer. For example:
  - Parties know they want to divide daycare expenses and set up child support but they're not sure where to start.
  - The parties have 401K accounts but haven't considered/researched how the divorce would affect them.
  - Parties are on good terms and want to share APR but they do not know what details they need to specify.
  
- Parties fall short of a valid agreement because there are barriers to communication, negotiation, or effective self-representation. Maybe one party is making unrealistic demands. Maybe one party is hesitant to agree, or appears intimidated. For example:
  - The parties were married for 27 years and the wife makes five times as much as her husband, but she insists he doesn't deserve any of her money.
  - Dad says he and Mom have agreed he will have all parenting time and decision-making responsibility; Mom is quiet and appears upset.

Outside the ERP, when a Judge sees a case in the “gray area,” he can decide whether a hearing officer can resolve the case. In the ERP, a hearing officer makes this decision herself. Essentially, the ERP triage officer must gauge whether the parties might be able to create a proposed judgment with the help of a hearing officer, being mindful that hearing officers are equipped to provide legal information and suggest recommended orders, but they may not advise litigants or force parties to agree to their recommendations.

### Making the assessment: can parties agree?

One hearing officer who does not perform ERP triage pointed out that each hearing officer assesses “agreement” a little bit differently. As an example, she explained that one hearing officer might refuse to write recommended orders for a couple that seems to agree out of impatience or frustration, while another hearing officer would find that the parties reached a consensus. Thus, whether there is an agreement becomes a very subjective question based on each individual hearing officer’s experience and opinion. This issue is not unique to the ERP, but one challenge it presents is that cases in the ERP often meet with two different hearing officers: the ERP triage officer and then another hearing officer who assists with a proposed judgment. If these two hearing officers see the case differently, it can cause confusion for litigants and hearing officers alike.

Currently, deciding whether an issue is genuinely contested is something that the hearing officers do based on their experience in the Domestic Relations Division. Appleseed suggests using this collective knowledge to develop a slightly more rigorous heuristic to assess whether parties might be able to articulate and agree to a reasonably fair settlement in an ERP prove-up readiness meeting. It could be helpful to speak with judges to hear how they decide to send cases to hearing officers. What criteria does a judge use? How does she know when a hearing officer can resolve a disagreement? Are there substantive issues she will not send to a hearing officer? Answers to these questions might inform the criteria ERP triage officers use to screen cases. If necessary, the ERP triage officer strategy could be adapted to fit within the parameters of the hearing officer’s authority.

Ultimately, any heuristic hearing officers use must take into account the issue itself (standards will probably be different for ARP issues versus financial issues) and the degree of agreement between the parties (which may be multidimensional, involving both the differences between the parties’ opinions and the dynamic between the parties). The table below is an example of a concise tool that ERP triage officers might use to sort cases where both parties have appeared for ERP:

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	Parties have reached an agreement (memorialized or not)  <b>Parties need help with forms</b>	Parties have not reached an agreement due to lack of knowledge or insufficient deliberation, but they seem willing to discuss & compromise  <b>Parties need legal information</b>	Parties disagree because stubborn, or a party seems unable to identify/advocate for their best interests  <b>Parties need legal advice/advocacy</b>	Parties disagree due to a meritorious legal dispute or factual complexity  <b>Parties need adjudication</b>
APR *Are children in college/11th or 12th grade? *Will either party move in next year?	Hearing Officer	RAP (Regular calendar)	RAP (Regular calendar)	Regular calendar
Marital property and debt	Hearing Officer	RAP (Hearing Officer)	RAP (Regular calendar)	Regular calendar
Maintenance and child support	Hearing Officer	Hearing Officer	RAP (Hearing Officer)	Regular calendar

In making an assessment, the ERP triage officer might consider questions such as:

- Is each party able to articulate their position on the issue? If not, can they quickly form an opinion following a brief explanation of the issue?
- Does each party seem to have a basic understanding of their legal options and the consequences of the divorce judgment?
- Are both parties reasonably able to advocate for their interests?
- Are parties agreeing based on a willingness to compromise, rather than out of intimidation, frustration, or impatience?

If the answers to these questions are yes, then the case is likely appropriate for a meeting with a hearing officer to prepare a proposed judgment. In such cases, the most parties need is a neutral explanation of relevant law, and hearing officers are equipped to provide this information without straying into “advice” territory.

Assessing the degree of agreement between parties also presents an opportunity for training or professional development for the hearing officers, if this is something the Court is interested in.

## Should the Resolution Assistance Program (RAP) be implemented, and if so, what would it look like?

Given that the RAP is not currently running, the ERP cases that do not proceed to a hearing officer should be returned to the regular calendar. However, if RAP were launched, it could absorb some of the cases that are inappropriate for a hearing officer. Pro bono attorneys in the RAP can advise and advocate for litigants in a way that hearing officers cannot. This assistance might enable parties to come to a reasonable agreement when they couldn't otherwise.

Ideally, RAP attorneys would be available for same-day appointments, much like the hearing officers who are not performing ERP triage. Asking parties to return for another date is a hassle, and in the two months of ERP that Appleseed observed there were never more than three cases in a day that could possibly have been considered for RAP. Frequently there were only one or two cases that were possible RAP cases, and sometimes none at all. In two months there were only 21 cases where both petitioner and respondent appeared for ERP, the case was not a simple divorce, and the case had no DV concerns. Some of these 21 cases would be appropriate for a follow-up meeting with hearing officer, and others would need to go back to the regular calendar, so it's a relatively low number of cases that might be triaged to RAP.

Apart from maintaining volunteer shifts of pro bono attorneys every week, another challenge to implementing the RAP is that pro bono attorneys who are unfamiliar with family law may have trouble guiding the ERP participants toward an agreement.

## What are best practices to ensure the ERP benefits litigants and respects their due process rights?

One hearing officer expressed concern about *ex parte* hearings when service on the respondent has not been effected. Because the ERP has the potential to be helpful to litigants before service is effected or an appearance is filed, the court should standardize what type of information the ERP triage officer should provide litigants depending on who is present for triage (petitioner alone; respondent alone; or petitioner and respondent together) and the status of service (whether respondent was served, has filed answer & appearance, is in default, or is in the 30 day post-service period).

In addition, one hearing officer recommended telling respondents that if they want to file an appearance, it is best for them to the clerk's office and do so *prior* to a follow-up meeting with a hearing officer to prepare proposed judgments.

## Summary of Key Issues for Further Discussion

1. The Resolution Assistance Program (RAP) has not launched. It seems possible that some cases that are inappropriate for a hearing officer could be well-served by RAP. On the other hand, ERP triage officers do not feel that RAP needs to be implemented in order to make the ERP successful. There are also potential barriers to implementation, as pro bono attorneys unfamiliar with family law might have difficulty assisting clients in a one-time meeting.
2. Pathway 1 and Pathway 2 are essentially collapsed into one category: the case is triaged to a follow-up meeting with a hearing officer. Within this category, some parties meet with a hearing officer on the same day of their ERP appointment, and others schedule a date to return to meet with the hearing officer. Some meetings are quick, while others could take up to two hours. However, in all cases, the goal is for a hearing officer to work with the parties to prepare the requisite paperwork for prove-up readiness. If there is an important distinction between Pathways 1 and 2, it is not currently recognized.
3. DV screening needs to be more robust. Some ways to improve the process include: cross-checking records with the clerk; including language in the invitation encouraging litigants to self-screen; and conducting a more thorough and private screening when parties appear for ERP
4. As the first point of contact with the Court, hearing officers in the ERP program could triage essentially any case in the Domestic Relations Division. While some cases are clearly appropriate for a meeting with a hearing officer to prepare proposed judgments, the assessment becomes more difficult when parties fall short of an agreement, which can happen for a variety of reasons. If the Court wants hearing officers to exercise discretion over these “gray area” cases, there is an opportunity to develop a more substantial heuristic for hearing officers performing the triage function.
5. The Court should establish clear standards and procedures for the ERP triage meeting based on which litigants appear and the status of service, in order to observe all participants’ due process rights.