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Page printed from: [The Legal Intelligencer](#)

[Back to Article](#)

Challenges Remain Despite New Phila. Family Courthouse

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Editor's note: This is the second in a three-part series.

It was a custody case held in Courtroom Number 8 with baby-blue walls and with tables for opposing litigants placed smack up against each other.

The mother did not want her ex or her estranged mother to know what her boyfriend's criminal history was.

Philadelphia Court of Common Pleas Judge Nina Wright Padilla retorted that it was relevant to the court, that the other pro se parties were entitled to the information, and began reading out the boyfriend's convictions.

Found guilty of corruption of the morals of a minor. The grandmother gasped, "Oh my God." Sexual contact with a minor. The grandmother started crying. Indecent assault on a person less than 13.

Even as the mother protested that she would make her boyfriend leave her home, that she didn't know of his criminal history, the judge immediately granted sole physical custody to the father. The mother had withheld her children from their father and grandmother, the judge said, and moreover she was living with a convicted sex offender.

"They can't continue to live in your house if you're going to live with a man like this. ... If you choose a mate in the future, he cannot have a criminal record," Padilla said.

The day before, three kids had lived with their mother. After an hour-and-a-half hearing, their father now had sole physical custody and orders from the judge to pick them up from the babysitter.

The case before Padilla was just one of the vast majority of cases in which pro se litigants represent themselves in cases like custody, child support and divorce disputes.

Pro se litigants are just one of the many issues facing Philadelphia Family Court. The number of cases has exploded in recent years. The pay for the bar to represent parents and children in dependency cases is paltry and hasn't been raised for years. There is a backlog in the custody cases. While many of the judges are dedicated, family court, with its low profile and emotionally distraught disputes, is hardly seen as a plum assignment by many judges.

With a new unified Philadelphia family courthouse slated to open next summer, some problematic areas in the practice of family law will require more than just modernized premises, but changes in administration to cure those ills, members of the family court bar told *The Legal*.

Mark A. Momjian, a domestic relations practitioner with Momjian Anderer, said, "Bricks and mortars are an important step to impact the administration of justice. ... It's not the only thing."

Opening Family Courtrooms

One big question for members of the family court bar is whether Philadelphia will make its family courtrooms open.

Even though the Pennsylvania Constitution calls for courts to be open, 34 S. 11th St. has been restricted to those with business in the court and no one can enter domestic relations proceedings but litigants and their lawyers.

The courtrooms in the domestic relations courthouse are designed to only have the parties for one case present at a time, and the idea was that the court, in its *parens patriae* role, wanted to protect and shield the privacy of the parties involved, Momjian said, but the flip side is that pro se litigants need to see what happens, what the procedures are and what is required to present their cases.

The Support Center for Child Advocates' Frank Cervone said the law is turned on its head with the current practice to always have dependency cases closed to the public. There is supposed to be a finding in each individual case to close that courtroom, he said.

Transparency would keep judges and lawyers accountable to meeting their legal and ethical duties, Cervone said.

Milton S. Savage, a family law practitioner with the Law Office of Milton S. Savage, said in an interview in 2011 with *The Legal* that when the public is unable to view family court proceedings, the only information they hear is from litigants who recount their experiences in court even if they do not have a full understanding of the process.

Pro se litigants "may not understand court proceedings or court orders, which may create the effect of causing cynicism and lack of confidence," Savage said. "Which creates more difficulty for themselves and the court at arriving at a reasonable and appropriate solution for their claims."

Philadelphia Court of Common Pleas Judge Kevin Dougherty, administrative judge of the family division, said the "building will be opened to the public much more than it is now."

The building will be open to the public, but each case will be addressed individually on whether the courtroom will be closed in that case, said Philadelphia Court of Common Pleas Judge Margaret T. Murphy, the supervising judge of the domestic relations branch.

There will be big courtrooms that can seat 40 people in the gallery, and there will be small courtrooms that can seat 20 people in the gallery, Dougherty said.

There is one ceremonial courtroom that could accommodate juries in juvenile cases, Dougherty said, although he said he hopes that never comes to pass.

However, hearings and conferences with masters will not be open to the public, Murphy said.

"The lack of capacity to comply with the constitutional open court mandate, to provide essential assistance for pro se litigants, and to address litigant safety, along with the overall inadequacy of the current structure led to our core recommendation to replace the current building," said Carol E. Tracy, executive director of the Women's Law Project, and Terry L. Fromson, the WLP's managing attorney, in an email. "We were thrilled that the [First Judicial District] undertook the building of the new courthouse and are looking forward to the improvements it will bring." •

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