2005

An Analysis of Unified Family Courts in Maryland and California: Their Relevance for Ontario's Family Justice System

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1. INTRODUCTION

The Ministry of the Attorney General of Ontario has contracted with the University of Baltimore School of Law's Center for Families, Children and the Courts to prepare this research paper. The purpose of the paper is to provide an overview of unified family courts and court-connected family services in two jurisdictions, Maryland and California, as agreed to by officials of the Ministry. The overview provides information about the structure of each jurisdiction's unified family court, family services connected to the court, the role of judicial and quasi-judicial officers, the assignment and specialization of the judiciary, rules or processes to deal with backlog and high conflict cases, and geographical challenges. In addition, the paper discusses trends in the development of unified family courts and court-connected family services in Maryland and California, including a focus on common issues or experiences faced by these courts, and it highlights the method and scope of relevant evaluations conducted within these jurisdictions. Finally, the paper summarizes some of the experiences of Maryland and California that may be of interest to Ontario as it moves forward in the development and refinement of its family justice system.

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† This article is an updated version of one used at a 2004 Justice Summit given by the Ontario Ministry of the Attorney General. It is used with permission.

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2. UNIFIED FAMILY COURTS IN MARYLAND

(a) Overview

(i) *Structure of the Court*

Unified family courts in Maryland exist as divisions of the Maryland Circuit Courts. The court rule[1] creating the Family Divisions provides for the establishment of a Family Division in any Circuit Court with seven or more judges. As Maryland is a state comprised of many small political subdivisions, the practical effect of the rule is that Family Divisions exist in the state's five largest subdivisions (Baltimore City and Anne Arundel, Baltimore, Montgomery, and Prince George's Counties). In the remaining twenty smaller jurisdictions, there exists a Family Services Program. "Regardless of size, each jurisdiction offers the same range of services, and similar case management strategies to enhance the experience of families and children involved in domestic and juvenile litigation."[2]

Consistent with the unified family court paradigm,[3] Maryland's Family Divisions have comprehensive subject-matter jurisdiction over all civil legal matters pertaining to the family. The case types include: adoption, child support, child dependency, child custody and visitation, divorce, domestic violence, guardianships, involuntary admissions, juvenile delinquency, name changes, paternity, and termination of parental rights.

(ii) *Family Court Services*

As noted above, family services are a critical component of all courts throughout Maryland, regardless of whether there is a separate Family Division within the jurisdiction's Circuit Court. As a measure of the extent to which the court system supports family services, the Administrative Office of the Courts has created a special department, the Department of Family Administration, to oversee and coordinate statewide

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1 Md. Ct. Rule 16-204 (effective July 1, 1998).

2 Circuit Court Family Divisions and Family Services Program, [hereinafter Family Services Program] 1 (2003).

3 See Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Family Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. Cal. L. Rev. 469 (1998) (explaining that unified family courts have comprehensive jurisdiction over all family matters).

efforts to provide an array of family services to Maryland's family law litigants. Day-to-day administration of family services is allocated to Family Division Coordinators who are responsible for family services resource development and program oversight in Maryland's five largest jurisdictions, while Family Services Coordinators perform this function in the jurisdictions without a formal Family Division structure.

Family services are organized under five general categories, including: alternative dispute resolution, evaluative services, educational and therapeutic services, safety and protection services, and legal services. The delivery mechanism for services includes those that are provided directly by the court; those that are available through a cultivated network of private, non-profit organizations or government agencies; and those that are available via contractual agreements between the court and private service providers.

Although the extent and type of services vary across the state, there are several core services common to all jurisdictions in the Maryland court system. For one, co-parenting education is available statewide. A Maryland court rule[4] authorizes judges to order parents involved in custody litigation to attend parent education seminars and prescribes the content and the length of the course. During FY 2003, nearly 9,000 parents underwent court-ordered parent education.

All Maryland courts also offer some form of assistance to *pro se* litigants, as the number of unrepresented family law litigants continues to rise.[5] "Maryland stands out as one of the few states that has adopted a statewide strategy for providing assistance to the self-represented."[6]

Pro se assistance exists in various forms, such as no cost legal clinics staffed by attorneys under contract to the court to provide form pleadings, information, and advice to self-represented litigants; more informal centers staffed by *pro bono* lawyers; form pleadings available at all courthouses and on the internet; and a help-line staffed by attorneys who are available to assist litigants with the completion of form pleadings.

Finally, *pro se* assistance now includes more active case management for *pro se* cases in order to avoid the case stagnation that may result for want of active oversight by an attorney. In this regard, some jurisdictions are more aggressively managing cases brought by *pro se*

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4 Md. Ct. Rule 9-204 (effective July 1, 2001).

5 See Family Services Program, *supra* note 2, at 8 (noting that 37,862 individuals used *pro se* assistance services in that year).

6 See *ibid.* at 12.

litigants by implementing regular status conferences to determine what next steps to take to move the case forward.

Services for victims of domestic violence are also universally available across jurisdictions. These services are described in more detail in another section of the paper. The court's overarching concern with respect to this population of litigants is their safety; thus, "Maryland's Circuit Court Family Divisions and Family Service Programs take extraordinary measures to ensure those victims can access the legal system to obtain protection."[7]

(iii) *Judicial and Quasi-Judicial Officers/Assignment and Specialization*

Court personnel in the Family Divisions function as teams, which include a judge, a court coordinator, court clerks, parent educators, mediators, mental health and social work professionals, and custody evaluators. The Administrative Judge in each jurisdiction appoints a Family Division Judge-in-Charge and establishes time-limited rotations for the judges, as well. Family Division judges assigned to the domestic docket typically preside for a minimum period of eighteen months, although the length of the rotation beyond that amount is somewhat variable across the jurisdictions. Family Division judges hearing exclusively juvenile matters may sit for longer periods extending to several years or more.

Depending upon the overall needs of the particular Circuit Court in which the Family Division resides, Family Division judges may hear other matters. In most cases, however, these other cases comprise no more than twenty-five per cent of the judge's overall docket assignment.

Family Division Masters serve permanent assignments in the division, and they have limited jurisdiction over such matters as child support establishment and modifications and child custody and visitation and modifications. In one jurisdiction, Baltimore City, a Special Master presides at hearings for temporary restraining orders in domestic violence cases. Masters also have limited jurisdiction over juvenile delinquency and child dependency cases.[8] As noted above, the jurisdictions that do not have Family Divisions each has a Family Services Coordinator who cultivates court-community resource connections and devel-

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[7] See Family Services Program, *supra* note 2, at 18.

[8] Md. Ct. Rule 9-208 (effective Jan. 1, 2004).

ops and administers in-court service programs, such as parent education seminars and child exchange programs.

Maryland Family Division judges are required to participate in a specialized training or family law curriculum, sponsored by the Maryland Judicial Institute. Once a judge has completed the training, ongoing training in family law and related topics is subject to training opportunities offered by the jurisdiction in which the judge sits. Consequently, family law training varies and depends upon the resources available to each court. In the Circuit Court for Baltimore City, the largest jurisdiction in the state, the Family Division has an affiliation with a Medical Services Office, staffed by psychiatrists, psychologists, and social workers. Medical Services Office staff perform forensic custody evaluations and family evaluations in delinquency cases, monitor a supervised visitation and child visitation exchange program, and provide lay advocates for self-petitioning victims of domestic violence. In addition, they provide ongoing training for Family Division judges on such topics as child development, substance abuse, and family dynamics.

(iv) *High Conflict Custody Cases*

Echoing a national trend, the Maryland family court system is beginning to implement a parent coordination model that employs a specialist trained to manage high-conflict families by intervening early in the court process to reduce existing acrimony and to prevent further harmful discord from arising. The Department of Family Administration has sponsored a two-day workshop for mental health professionals featuring a nationally recognized expert on the dynamics of divorcing families, who also is the progenitor of the parent coordination model. Recently, two Maryland Circuit Courts have hired trained parent coordinators.

(v) *Geographic Challenges*

Maryland's political geography, which consists of both small rural and large urban jurisdictions, presents difficulties relating to the structure of its family courts, the services available to families, and access to the courthouse itself.

Locating Family Divisions in those courts with an adequate number of judges such that a family law docket assignment does not otherwise strain the court's judicial resources as to other matters has resolved the

structural issues. The remaining jurisdictions, although not structured as Family Divisions *per se*, at least subscribe in principle to the tenets of the model in that they offer family services and adhere to a universal set of case management strategies.

Family services are largely dependent upon what is available in the local community, what the community members need, and the physical capacity of the court to accommodate in-court service programs. Maryland's smaller jurisdictions, through the efforts of the Family Services Coordinators, have managed to leverage existing community resources by creating partnerships with community providers to benefit family court litigants.

The proximity of the courthouse itself to any given litigant can be an obstacle in the state's outlying rural areas and in the larger counties, as well. The structure of the Maryland court system, which includes a small claims court of limited jurisdiction, the District Court, therefore provides for concurrent subject-matter jurisdiction between District court and the Circuit Court for civil protection orders for family violence. The disadvantage of this overlapping jurisdiction, however, is that services for victims and their families are only available in the Circuit Courts.

(b) Trends in the Development of Maryland's Unified Family Courts and Court Services

(i) *Measuring Effectiveness*

The growth and development of the unified family court movement in Maryland has progressed to a point where the court system has become increasingly interested in empirically demonstrating its effectiveness.

To that end, a recent grant from the State Justice Institute provides for the development of four evaluation tools: two survey satisfaction levels of litigants and attorneys as they relate to judicial performance, and the remaining two elicit feedback from users of alternative dispute resolution and *pro se* assistance projects.

(ii) *Ensuring Child Welfare and Promoting the "Best Interests" of Children*

Pursuant to the Foster Care Improvement Project (FCIP), that spawned a large-scale study of child abuse and neglect procedures in Maryland, the court system currently is implementing recommendations

stemming from that initiative. Overall, the recommendations are targeted toward improving case management of child welfare cases. Strategies currently implemented include mediation programs to resolve child abuse, child neglect, and termination of parental rights cases; the development of Family Dependency Drug Courts; and the creation of a permanency planning liaison position.

In harmony with a national trend toward using alternative dispute resolution for cases involving child dependency and the termination of parental rights, individual jurisdictions in Maryland are developing similar programs. These include programs in Baltimore City, a large urban county, a mid-size county, and a small rural county.

Family Dependency Drug Courts, modeled on the adult drug court, monitor substance abuse treatment for drug dependent parents charged with child neglect. The permanency planning liaison works in concert with other court personnel to ensure timely resolution of child dependency and termination cases consistent with statutory guidelines.

(iii) *Creating Services for Discrete Family Law Litigant Populations*

Services for Children

Court services for children include psycho-education groups for children involved in divorce, custody, and visitation cases; monitored visitation exchange programs; and supervised visitation. Children's groups are age specific, and they often are scheduled concurrently with sessions for parents to facilitate parental participation.

Parent education is almost universally available in America's family courts. The next wave of services includes providing similar services to children. In Maryland, groups for children of separating and divorcing parents focus on helping children express their concerns about the changes occurring in the family and utilize effective coping mechanisms to address their needs. In some Maryland jurisdictions, the groups are more therapeutic in nature, thereby providing a more in-depth and longer-term opportunity to process the family break-up.

Monitored visitation exchange programs provide an opportunity for parents to pick up and drop off children for visitation purposes in a neutral and safe setting. These programs promote the child's relationship with the non-custodial parent and minimize the hostile interactions to which children often are exposed under such circumstances. These pro-

grams are proliferating around the state, and in at least one instance they are situated in the courthouse itself.[9]

Supervised visitation programs also are aimed at protecting children while fostering parent-child relationships. These programs enable non-custodial parents, who otherwise would be deemed unsuitable for visitation with their children, to visit with them in a controlled environment. Maryland courts either contract with community agencies or provide on-site programs for this purpose. In Baltimore City, for example, there is a designated area for visitation in the Family Division that is monitored by court-employed social workers.

In addition to these direct services, several Maryland courthouses now provide children's waiting areas stocked with toys, books, and games. In Baltimore City's Family Division, the waiting area provides child supervision by specially designated staff so that parents need not take their children to the courtroom.

Services for Never-Married Parents

In Baltimore City's Family Division, sixty-five percent of the contested custody cases recently filed involve unwed parents.[10] Specific programming that addresses the issues unique to parents involved in dissolving non-marital relationships enables the court to respond to this population in a more focused and productive manner. Rather than presupposing a marital bond and the dynamics stemming from such a union, the programs are directed toward teaching conflict resolution in a child-focused context.

Services for High Conflict Families

As noted above, Maryland courts are following the lead of other courts in the United States by implementing specific strategies designed to assist high-conflict families. To this end, two Maryland counties are piloting projects that support parent coordination. Specifically, the projects involve a mental health professional serving in the role of "parenting coordinator."[11] The parenting coordinator works with families during the court process to prevent and contain conflict by employing dispute resolution techniques and by connecting families to other appropriate court resources.

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9 The site for the project in Baltimore is the Circuit Court for Baltimore City's Family Division.

10 Circuit Court for Baltimore City Annual Report 4 (2003).

11 Family Services Program, *supra* note 2, at 5.

Although not specifically targeted toward high conflict families, the use of parenting plans is being studied in one of Maryland's largest jurisdictions. Using a dispute resolution model to assist parents to develop proactive plans that address co-parenting issues, the pilot project conforms to the parenting plan provisions of the *American Law Institute's Principles Governing the Allocation of Responsibility for Children.*[12]

Services for Unrepresented Litigants

The provision of legal services for *pro se* parties is a core service in all Maryland Family Divisions and Family Services Programs. Data derived from individual jurisdictions demonstrate that the number of persons representing themselves in family law matters continues to rise.[13] As a response to the trend, the Maryland judiciary has implemented a "multi-faceted strategy for addressing the needs of the self-represented."[14] Consequently, Family Divisions and Family Services Programs around the state contain *pro se* assistance centers staffed by lawyers. These individuals serve either in a volunteer capacity or as contractual court employees to provide legal information to *pro se* litigants and to assist them with the completion of form pleadings.

In order to expedite filing family law claims, a statewide panel developed form pleadings to simplify filing family law complaints. These documents relate to actions for marital dissolution, child custody and visitation, child support, and protective orders for domestic abuse. In addition to being available at the courthouse, they are also available via the internet. Lastly, a statewide toll free helpline is available so that court users have telephone access to attorneys who will help them with the completion of form pleadings.

In response to this ever growing *pro se* litigant population, current services are augmented with the following: (1) collection of more discrete data subsets describing this cohort of the litigant population with the hope of providing more targeted services, and (2) increased oversight by the court to avoid stalled cases and needless procedural delays.

Services for Non-English Speaking Populations

The problem of *pro se* litigants' access to the court system is compounded for non-English speaking litigants. One Maryland jurisdiction

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12 See *ibid.* at 39.

13 See *ibid.* at 8.

14 See *ibid.*

with a large Spanish-speaking population uses legal self-help service providers fluent in Spanish to assist this segment of its unrepresented litigant population. Plans to expand the service include establishing legal information and advice centers at community-based sites throughout the county.

Services for Substance Abusers

Services for substance abusers vary from jurisdiction to jurisdiction, depending upon demographics and available resources. In Baltimore City, a jurisdiction with a demonstrably high incidence of drug abuse among its citizens, the Family Division has a master's level social worker responsible for performing substance abuse evaluations upon a referral from the court.

Many courts also have protocols for drug and alcohol testing when the pleading contains an allegation of substance abuse. In some courthouses, drug testing is performed on-site, and the results are available on the day of the testing. This enables a more expeditious connection to treatment providers for individuals in need of such services.

Maryland also is expanding its drug court initiative to include specialized courts for juvenile addicts and substance abusers. Currently, the state has five juvenile drug courts in operation, and it plans to open several more in the near future.

Services for Indigent Populations

A core principle of the services connected to Maryland's Family Division is that they are "accessible equally to all litigants, regardless of their ability to pay for the services. . .".[15] To ensure that this principle is followed, a condition to receive state grant funding for service programs is that the jurisdiction agrees to provide a fee waiver for individuals who meet certain income-eligibility criteria. In some jurisdictions, a further provision exists for payment based on a sliding fee scale. Within the realm of providing legal services for the indigent, local Family Services Coordinators are participating in community planning committees to increase attorney participation in *pro bono* legal services programs offered by the court system.

Services for Victims of Domestic Violence

All Maryland Circuit Courts, regardless of whether there is an established Family Division, have protocols to refer victims of domestic

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[15] See *ibid.* at 13.

violence to legal and social services tailored to meet their needs and the needs of their children. In the established Family Divisions, on-site services are available via court-community collaborations with local domestic violence advocacy agencies. These services, known as Protective Order Advocacy and Representation Projects (POARPs), provide either paralegals or attorneys who can assist with procuring emergency stay-away orders and final orders of protection for extended periods of time. In addition, some courts have designated case coordinators or other specialized case management strategies to promote the effective and efficient handling of these compelling cases.

(iv) *Improving Case Information and Case Management Systems*

There is a statewide initiative to convert all Maryland courts to a single uniform database to which all judges and court personnel have access. Uniform conversion to a single database enhances the development of a standardized and consistent approach to data collection. In 2003 a plan was put forth to develop a statewide domestic violence database to provide for a single integrated information bank to store information about domestic violence cases. Ultimately, this allows all Maryland judges and law enforcement officers to confirm the existence of protective orders so as to avoid issuing conflicting orders and to expeditiously enforce those orders that are valid.

Case management initiatives currently are aimed at several categories of cases. These cases include child protection and termination of parental rights cases, *pro se* cases, and high conflict custody cases. The strategies involve both designated court personnel who have hands-on management responsibilities, as well as prescribed timelines for the resolution of each case type. Prior case management strategies that are now institutionalized within the Family Divisions include triage for referrals to parent education and mediation and pretrial case conferencing to promote the settlement of as many issues as possible.

(v) *Bolstering Interdisciplinary Collaborations*

"The approach of Maryland's Family Divisions to family law decision-making is therapeutic, holistic, and ecological."[16] It is axiomatic that interdisciplinary teams within the courthouse and court-community

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[15] See *ibid.* at 38.

connections among a diverse group of service providers are an essential operational mandate of Maryland's Family Divisions and Family Service Programs. The complexity of family law matters is such that it requires the expertise of mental health professionals, social workers, educational specialists, substance abuse treatment providers, and others to optimally resolve these cases. In this regard, for example, the Baltimore City Family Division partners with a psychiatric hospital's community education program to provide mediation and parent education services for the court. In addition, an institutionalized component of this particular Family Division is its Medical Services Office, which consists of psychologists, psychiatrists, and social workers working in concert with the court to provide a range of family-focused services.

(c) Common Issues

(i) *Diminishing Financial Resources*

Although the percentage of litigants in Maryland seeking relief in family law matters remains constant at nearly fifty percent of the statewide trial court caseload, fiscal resources have continued to dwindle. This harsh economic reality threatens the ability of the Family Divisions and Family Services Programs to provide a stable level of services to families and children involved in the court system. It is increasingly important for Family Division Coordinators and Family Services Coordinators to carefully assess needs and plan accordingly so that the service component of the unified family court paradigm is not compromised.

(ii) *Increasing* Pro Se *Population*

As noted earlier, the number of pro se litigants continues to increase. In light of the fact that unrepresented litigants account for sixty-four per cent of the family law litigants statewide,[17] the court system is becoming more sophisticated about delineating the scope and the nature of this problem so that available resources are deployed in a more strategic manner. To this end, the Maryland court system is collecting more information about the *pro se* population and intervening at key points in the litigation process. For example, all court connected *pro se* projects assess litigants at the outset to determine which of them can reasonably

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[17] See *ibid.* at 30.

proceed without the assistance of an attorney. Those that cannot are referred to community legal services providers.

The system also determines at what stages of the litigation process the individual is more or less apt to handle her own legal matter. Finally, the geographic locations of the largest cohorts of the *pro se* population are being identified for the purposes of allocating resources more efficiently.

(iii) *Integrating Juvenile and Child Protection Matters with Other Family Law Matters*

Although the rule establishing Maryland's Family Divisions includes juvenile delinquency and child protection matters within the court's subject-matter jurisdiction, a separate de facto juvenile court persists. In some jurisdictions, juvenile docket judges and domestic docket judges engage in regular collaborations regarding how best to coordinate their efforts on behalf of families with multiple family court cases. These efforts, however, fall short of fully embracing the unified family court model, which presupposes a more comprehensive operational mandate. The next major challenge to implementation is the unqualified incorporation of all family law case types under the Family Division umbrella.

(d) Evaluation Strategies

"Maryland Circuit Family Divisions and Family Services Programs are subject to a series of regular evaluation protocols."[18] These protocols take the form of quarterly financial and program reports to the Administrative Office of the Courts. A recently initiated protocol involves regular site visits, as well.

The Maryland Judiciary adopted *Performance Standards and Measures for Maryland's Family Divisions*, a document that adapted performance standards for civil trial courts for use in the family court arena. The standards serve as benchmarks to conduct site visits and other forms of evaluations.

The development of best practices for all court programs is a forthcoming evaluation initiative. Thus far, two program components have a

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[18] See *ibid.* at 34.

complete set of best practice guidelines: *Pro Se* Best Practices and Family Court-Based ADR Program Best Practices.

The Department of Family Administration this year will attempt to obtain evaluations from court constituents so as to improve customer service. To that end, four survey instruments are being developed: (1) a Client Satisfaction Survey, (2) an Attorney Satisfaction Survey, (3) Exit Survey for *Pro Se* Assistance Project Participants and (4) Exit Survey for Mediation Program Participants.

In sum, the state of Maryland has made great strides in implementing the unified family court model during the six years since the advent of the court rule establishing the five Family Divisions and Family Services Programs in all Maryland courts. The challenges facing the court system include maintaining the current level of services in the face of shrinking fiscal resources, improving the capacity of family court information systems, and expanding the opportunities to measure the court's effectiveness.

3. UNIFIED FAMILY COURTS IN CALIFORNIA

(a) Overview

In California's Superior Courts, juvenile and family cases have constituted forty per cent of the total number of civil cases filed during the 2001-2002 year.[19] The development of the unified family court movement in California reflects the justice system's response to a demand for judicial management of the increasing number of family court cases that includes not simply adjudication, but also a comprehensive, holistic system based on a therapeutic approach to families and children in crisis.[20] Before going into the specifics of California's development of a unified family court model, it may be helpful to look at the theoretical underpinnings that characterize this approach in California.

First, the development of unified family courts in California is based on the notion of the family as a "community" – "the parties in a family dispute are part of an extended social group, including children, other

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19 Judicial Council of California, Administrative Office of the Courts, 2003 Court Statistics Report: Statewide Caseload Trends 1992-1993 through 2001-2002 vii (2003).

20 See Babb, *supra* note 3, at 495-97.

family members, friends, and co-workers."[21] As Deborah Chase, Senior Attorney at California's Center for Families, Children and the Courts, points out: "Unlike civil litigants, who have little or no connection other than the dispute, the individuals involved in family law disputes will be continuing their relationships far past any given court hearing on a particular disputed issue. They will continue to be connected, usually for life, because of the children they care for."[22]

A second objective informing the development of California's unified family courts is the attempt to bridge the gap between communities and courts. In many traditional court systems, courts do not understand the services provided to family law litigants, such as drug treatment, mental health treatment, anger management, and parenting classes, among others. Similarly, the providers are often unaware of the details related to the legal cases that bring their clients to them. As unified family courts have developed, California's unified family courts have made concerted efforts to foster much closer collaboration between service providers and the courts. Judges and court staff learn about the services available in the community, while frequent and consistent meetings among judges, court staff, and providers result in greater understanding by providers of the court's role and operation.

Third, a unified family court approach works to remedy the fractured family court system that previously existed in California. Each unified family court brings various matters relating to one family under the auspices of one judge or one team who has comprehensive subject-matter jurisdiction over all issues that may arise for the family. This system enhances the court's ability to coordinate with service providers and serves families and children in a more coordinated and effective way. A critical component of this approach is information-sharing. California's unified family courts are handling issues of coordination and unification in a number of ways, ranging from a one judge-one family model, to a one team-one family approach, to a one family-one case manager model.

In short, the history of California's move toward unified family courts is characterized by the desire to provide a therapeutic, ecological approach to families and children in the courts, as well as the need to improve the efficiency and effectiveness of family courts. While differ-

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[21] Deborah J. Chase and Hon. Sue Alexander, *Courts Responding to Communities: Community Courts and Family Law*, 2 J. Ctr. Fam., Child. & Cts. 37, 45-46 (2000).

[22] See *ibid.*

ent models have evolved and have begun implementation, they all involve court-community collaboration; consolidation of cases; a one judge-one family or one team-one family approach; and the overarching goal of unifying courts, communities, and families.

(i) *Structure of the Court*

The California judicial system is divided into trial courts (Superior Courts) that include family divisions (dissolution, separation, nullity, domestic violence, and child support) and juvenile divisions (dependency and delinquency). All judges are Superior Court judges. The majority of California courts still operate with separate and specialized family, juvenile, and probate departments – and each department has minimal knowledge of the decisions of the other, even if the decisions involve the same family and its children.[23]

Four years ago, the Judicial Council of California, chaired by the Chief Justice of California, issued an Operational Plan for fiscal years 2000-2001 through 2002-2003.[24] The plan articulated high priority, state level operational objectives for the California courts. Goal IV of the plan, "Quality of Justice and Service to the Public," included the objective of establishing "unified or coordinated family court systems" and specifically authorized six "mentor courts" to be established in the state by June 2003.[25] These courts were to serve as examples to other courts throughout the state and were to provide technical assistance and guidance to jurisdictions interested in developing their own model of a unified family court. A second key objective included in Goal IV was to "develop a statewide strategy to reduce differences among courts in the quality and availability of trial court services provided to children, youth, and families, and adults requiring court intervention" by drafting "essential service standards" and collecting and testing "promising practices."[26]

The first step in the actual implementation of Goal IV was a statewide planning process in 2001-2002, in which the Superior Courts of thirty-one California counties received grants to develop strategies for

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23 Hon. Donna M. Petre, *Unified Family Court: A California Proposal Revisited*, 1 J. Ctr. Fam. Child. & Cts. 161 (1999).

24 Judicial Council of California Strategic Plan, Leading Justice into the Future (2000).

25 See *ibid.* at 14.

26 See *ibid.*

unification or coordination of proceedings involving families and children. Several important concepts emerged during the planning process, including the need to address domestic violence issues in both family and juvenile matters; the value of cross-disciplinary training for judicial officers and court staff in all divisions handling cases involving families and children; and the importance of implementing systems that allow for appropriate information sharing and coordination throughout the courts.

In 2002, the Center for Families, Children and the Courts, a division of the Administrative Office of the Courts, issued a statewide Request for Proposals for the "Unified Courts for Families" program to implement Goal IV. The proposals were requested to create and support unified court systems to coordinate family, juvenile, and other related case types and to remain easily accessible for children and families in family court. In addition, the mentor courts were to serve as models of successful approaches to unification and coordination for replication in other courts.[27] While courts were free to design their particular approach to unification, each proposal had to address domestic violence issues in both family and juvenile matters, training and expertise of judicial officers and court staff who handle juvenile and family matters, and the implementation of systems for information-sharing and coordination throughout the courts.

After reviewing thirteen applications, in March 2003, mentor court programs in seven courts were funded. In the second year of the program, an eighth court was added. The courts had the flexibility to choose a model to fit their constituents' needs. While each court chose its own approach, they were all designed to accomplish ten program objectives set out in the Request for Proposals. They were expected to achieve these objectives over the course of the three years of the program.

1. Local rules and/or protocols for identifying families who have cases in more than one division or courtroom.

2. Local rules and/or protocols for appropriate information to inform judicial officers about existing orders to avoid conflicting orders.

3. Local rules and/or protocols for notifying court-connected ser-

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[27] Telephone interview with Julia Weber, Program Director of Center for Families, Children and the Courts, California Administrative Office of the Courts (July 2, 2004).

vices such as family law facilitators, mediators, evaluators, attorneys, social workers, probation officers, and victim advocates that members of a family with whom they are working are involved in other court-related matters.

4. Formal calendaring methods to coordinate multiple court appearances and improve access for litigants.

5. Case-tracking methods to expedite cases where appropriate and reduce unnecessary delays.

6. Local rules and/or protocols to coordinate or reduce the number of times children are required to testify about the same issue in different court matters.

7. Local rules and/or protocols addressing safety and security for family and juvenile court participants, domestic violence victims, and staff.

8. Local rules and/or protocols for providing services and making referrals for families with mental health and/or substance abuse concerns.

9. Local rules and/or protocols addressing how cases should be handled when a family has two or more cases within the same division or in multiple divisions.

10. Evidence of accessible services, including programs for self-represented litigants, use of interpreters and volunteers, and facilities designed to meet the needs of families and children in courts.[28]

Given this framework, each mentor court has adopted a one-judge-one-family approach, a one-case-coordinator-one-family approach, or a case management coordination approach that identifies families with more than one case in the court system and shares that information with the court and court-connected services.[29] In addition, the Unified Courts

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[28] California Administrative Office of the Courts' Center for Families, Children and the Courts, Unified Courts for Families Program – Mentor Courts' Request for Proposals 5 (2002).

[29] In the case management coordination model, typically a case coordinator prepares a family case diagram or file that provides information on all cases in which the family is involved. In San Joaquin County, for example, the case coordinator uses a shorthand code to log significant case proceedings into the

for Families Program involves a close collaboration among the Administrative Office of the Courts, an evaluator, the mentor courts, and other courts in California. Collaborative activities include:

- The Mentor Court Consortium which has brought together staff from all participating mentor courts with Administrative Office of the Courts staff and researchers at least once during the first year of the project. The Consortium is tasked with pursuing goals such as developing standardized minute orders for juvenile and family case types, developing standardized research questions and an evaluation template, determining and documenting promising or best practices, sharing information about case management system options, delineating legal and other obstacles and solutions, and developing means to share information with other courts around the state and to replicate successful projects.
- Site visits by Administrative Office of the Courts staff and evaluator staff.
- Informal sharing among mentor courts.
- *The Unified Courts for Families Desk Book*, a resource manual produced in July 2004 to assist California's courts in developing approaches to unification and coordination.
- Mentoring activities, whereby the mentor courts provide training and technical assistance to other courts to allow all California courts to benefit from the lessons learned over the course of the project.[30]

(ii) *Family Court Services*

Yolo County's unified family court exemplifies the "one-stop-shopping" emphasis that many unified family courts strive to incorporate into their structure. Through the family and social services available to families and children in the Yolo County family court, the court provides therapeutic responses to physical and emotional abuse, drug and alcohol

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unified court master file. This is expected to result in coordination with other family proceedings in other courtrooms and to significantly increase the ability of family members to comply with court orders.

30 See *supra* note 28, at 6.

dependency counseling, family counseling, mediation, psychological evaluations, and other support. This approach is beneficial and extremely cost effective. In fact, the county has estimated that it saved over $30,000 in 2000 in decreased foster care placement as a result of the unified family court.[31]

A wide range of services is available through the Yolo County family court. In order to minimize conflicting orders between the unified family court and other court departments, the family court has hired a Case Manager to coordinate all files involving individuals appearing before the court. In addition, the court funds a Family Law Facilitator who assists "*pro per*" or unrepresented family law litigants on a first come, first served basis. He/she assists litigants in the preparation of family law pleadings in cases where child and/or spousal support are issues. More specifically, the Family Law Facilitator can:

- Provide necessary court forms;
- Provide assistance to complete court forms and/or voluntary declaration of paternity;
- Prepare child support schedules;
- Provide referrals and lists of available resources;
- Provide general information and educational materials regarding family court;
- Prepare formal orders consistent with the court's announced order where neither party has an attorney;
- Meet with both parties to mediate issues of child support, spousal support, and/or maintenance of health insurance;
- Draft stipulations for submission to the court where the parties have agreed on some or all issues.

A low-cost, supervised visitation center was established with the assistance of a local congregation. Another was set up in collaboration with the local domestic violence agency through grant funding. Another grant, developed by the court in collaboration with the University of

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[31] Hon. Donna M. Petre, *Meeting Families' Needs: Yolo County Offers Cost-Effective Models in Unified Family, Domestic Violence and Drug Courts*, California County Magazine (September/October 2000), *at* http://www.csac.counties.org/counties_close_up/issues_and_trends/yolo_needs.html.

California, Davis, has established a family protection and legal assistance clinic.

In addition, the Yolo County family court works closely with the Yolo County Department of Alcohol, Drug, and Mental Health to ensure that appropriate services are available to families. A mental health worker is available each day to provide resource referrals to appropriate county and community services. In a one-month period alone, the mental health worker has referred nearly one hundred children for counseling. Moreover, the Department has sought and obtained grant funding to support a full-time therapist in court. The court refers families and children to the therapist for confidential, immediate, and long-term one-on-one counseling services.

To further meet the needs of families and children, the Yolo County family court has developed an Attorneys for Children program, which provides legal representation for children enduring difficult and potentially violent court cases. The court also has established a children's fund, which offers children gifts, such as bikes and helmets, tuition to community art classes, and, in one case, beds.

(iii) *Judicial and Quasi-Judicial Officers/Assignment and Specialization*

In California – as in other unified family court jurisdictions – the presiding judge oversees implementation and coordination efforts, guides formal training of other judicial officers and court staff, and attends to matters of legal and procedural importance. The mentor court presiding judges also serve as effective leaders in educating the public about the court and its importance to the community. The judges assigned to the unified family courts in California are expected to demonstrate a personal commitment and interest in the unified court and a willingness to participate in ongoing judicial education.[32]

The Unified Courts for Families Deskbook recommends that each court establishes one person who is responsible to manage the administrative aspects of the unification project. That individual is responsible to manage tasks, such as coordinating communication with the community, other courts, the Administrative Office of the Courts, and other agencies and governmental entities; collecting and providing data for

[32] California Administrative Office of the Courts Center for Families. Children and the Courts, Unified Courts for Families Deskbook 11-3 (2004).

the court's evaluation; coordinating training for court staff and judicial officers; and maintaining program files and records.[33]

Training is an essential component of each of California's mentor unified family courts. Every judicial officer whose principal judicial assignment is to hear family law matters in California must, if funds are available, attend certain judicial education programs.[34] Within six months of beginning a family law assignment, or within one year of beginning a family law assignment in courts with five or fewer judges, the judicial officer must attend a basic educational program on California family law and procedure designed primarily for judicial officers. In addition, the judicial officer must attend a periodic update on new developments in California family law and procedure and, to the extent that time and resources allow, must attend additional education programs on other aspects of family law, including interdisciplinary subjects relating to the family.[35]

In the mentor unified family courts, there is additional ongoing training as the sites expand their programs. In Los Angeles County, for instance, training covers the kinds of inquiries to make to determine if a case is flagged as a crossover case;[36] who should be notified about a crossover case; and how to access an automated system in another area of litigation for coordination purposes.

(iv) *High Conflict Custody Cases*

Title V of the *California Rules of Court* provides guidance regarding rules for dealing with high conflict cases. Each family court must include mediation services and case management procedures that allow sufficient time for parties to receive orientation, participate fully in mediation, and develop a comprehensive parenting plan.[37] The mediation process itself includes:

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33 See *ibid.*

34 See Cal. Ct. Rule 5.30 (effective Jan. 1, 2003).

35 See Cal. Ct. Rule 5.30(b) and (c) (effective Jan. 1, 2003).

36 A crossover case includes the following combinations of case types: dissolution with dependency, delinquency, domestic violence, and Title IV-D cases; Title IV-D with dissolution and dependency; dependency with dissolution; Title IV-D, delinquency, and domestic violence; delinquency with dependency and dissolution; and domestic violence with dissolution and dependency.

37 See Cal. Ct. Rule 5.210 (d) (effective Jan. 1, 2003).

- review of the intake form and court file; oral and/or written orientation or parent education;
- interviews with the child(ren);
- coordination of interview and information exchange (with the parent's consent) among agency or private professionals to reduce the number of interviews experienced by the child;
- assistance to the parties in developing a parenting plan, including provisions for supervised visitation in high-risk cases;
- a detailed schedule of the time a child is to spend with each party.

The *California Rules of Court* also specify protocols to determine and address family and domestic violence. Family Court Services, a court-connected service, must identify cases that involve domestic violence and must highlight family court services files to identify such cases. Family Court Services staff may recommend restraining orders and conduct a domestic violence assessment, offering appropriate services as available to family members.

The mentor courts also are establishing special services for high conflict cases. In Del Norte County, the court has created "Wraparound" – a program designed to help address high-risk family issues in a very intensive way. Wraparound focuses on helping families identify their needs and giving them the ability to create methods and plans that meet those needs. Areas of assistance include, for example, creating a livable environment; providing a way for non-residential parents to communicate regularly with their children; supplying beds for children so that they can spend overnights with non-residential parents; shuttling children to visitation with non-residential parents, babysitters, and after-school programs; helping arrange for a babysitter so that a parent can attend a Wraparound meeting; or helping a family to apply for government assistance.

(v) *Geographic Challenges*

California has addressed geographic challenges by allowing each jurisdiction to develop its own unified family court rather than imposing a "one size fits all" process on its courts. The mentor courts have taken into account their diverse demographic and geographic characteristics when setting up their unified family court structures.

For example, Butte and Glenn Counties – agricultural and rural areas with primarily low- and moderate-income families – have combined resources in a regional collaboration to locate and provide information to judges regarding families with multiple cases. The two counties share a services manager to assure that services are offered by an effective system of coordination among local services providers.

(b) Trends in the Development of California's Unified Family Courts and Court Services

(i) *Implementing the Mentor Courts*

The courts in Butte and Glenn, Del Norte, Los Angeles, Napa, San Joaquin, and Yolo are implementing their mentor court proposals addressing coordination and unification of family and juvenile proceedings. The processes employed by each court are expected to improve court operations and case outcomes by reducing the number of conflicting court orders, increasing the amount of information available to judicial officers, and providing services that assist family members. While the mentor courts are not required to unify or coordinate every family and juvenile case in which there are multiple cases or every case that would be eligible for the program they design, they must coordinate some aspect of family and juvenile proceedings.[38] A brief description and the status of each proposed project follows.

- Butte and Glenn Counties have formed a regional collaboration to locate and provide information to judges regarding families with multiple cases and to coordinate the services that families need. The court handles child custody issues, family support issues, restraining order, juvenile dependency cases, juvenile delinquency cases, criminal cases, and all other issues in which children are involved. Eligibility criteria for the unified family court include being a family with more than one open case in

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[38] Mentor court applicants were asked to consider the following case types and issues: dissolution, dependency, delinquency, adoption, child support and enforcement, emancipation, domestic violence prevention, probate guardianship, underage marriage, parentage, spousal support, non-criminal mental health, conservatorships, criminal domestic violence, criminal child endangerment and abuse, adult driving-under-the-influence cases, juvenile traffic, and other case types involving children and families.

the courts and having a need for coordinated court services, particularly due to domestic violence.

- Using a one family, one case manager model, Del Norte County coordinates all cases involving children. The case manager formulates a course of action based on the participants' "level of risk."
- The Los Angeles County court is focusing on coordination of dissolution, Domestic Violence Prevention Act, dependency, delinquency, and Title IV-D cases, initially in twelve courts throughout the county.
- The Napa County unified family court project includes family, delinquency, dependency, child support, paternity, guardianship, adoptions, domestic violence, and related criminal proceedings as deemed appropriate. The court is also focusing on improving self represented litigant assistance.
- The San Joaquin Superior Court is focusing on family law, domestic violence, dependency, delinquency, guardianship and adult drug court matters. Sixty or more families are to be identified each year for inclusion in the project, and they must have at least one active juvenile proceeding and at least two additional cases involving family members.
- The Yolo County project builds on the court's experience with a "one judge, one family" model. The court plans to establish a new legal center for case processing; expand case management, coordination, and referral services; improve tracking of cases; and develop monthly statistical reports. Additionally, the court plans to establish a services provider roundtable, unified court newsletter, education seminars, and a redesign of their mediation process.

They are, however, especially focused on information-sharing – ensuring that family members can receive proper orders within their case without having to file in another division or courtroom. Consequently, certain unified family courts are exploring ways to guarantee that a judge issuing an order in a family matter knows, for example, about a juvenile custody order or the disposition of related criminal matters.

(ii) *Evaluation of California's Mentor Courts – Method and Scope*

In California, the Center for Families, Children and the Courts' staff has worked in collaboration with the mentor court counties to develop a broad, multi-dimensional evaluation plan to adequately capture their local innovations. The evaluation is designed to collect comparable data from each court in order to reflect the similarities among these programs and to make the best use of available resources. A main priority is to capture data from key stakeholders, court staff, and adult participants in court cases.

The evaluation will have a process and an impact component and will collect both qualitative and quantitative data. It will focus on providing information about the following elements:

- Resource savings to the courts that result from the program;
- Existing processes in each of the ten program object areas as well as any local rules and protocols developed to achieve those objectives in court;
- Lessons learned from developing and implementing the program (from the perspectives of program staff, court staff, and judicial officers);
- The impact of the program on the court system (including court staff and judicial officers) and on families who participate.

Pre-mentor court data collected in 2003 from each mentor court county has described characteristics such as court operations, case flow, services available, and litigant and court staff perspectives prior to the implementation of the mentor court. In subsequent years of the project (2004-2006), plans exist to collect comparable unified family court or post-implementation data on court operations, case flow, services available, and litigant and court staff perspectives during and after the full implementation of the mentor court in each county.

There are five main components of the evaluation.

a) Telephone Calls/Interviews with Stakeholders: Through this project, counties will redesign the court processing and services for families with multiple cases. This data element will document changes in the court processing, as well as collect qualitative data to document the "lessons learned" by key stakeholders during implementation.

b) Participant Data Sheets: Counting the number of families with multiple cases is challenging in most courts, and little is known about the demographics and needs of these families. Identifying the characteristics of these families can help identify unmet service needs, such as language barriers. It is, therefore, important to collect information about families with cases in each mentor court. Data collected about each family member include demographics, number and types of related cases, and issues relevant to current cases.

c) Court Operations Data (Case-Level and Courtroom-Level): This data element will collect baseline information on overall court operations, such as number of filings and individual court processing at the case level (such as the number of related cases per family, judgments in cases, etc). The goal is to assess changes in court operations and individual case processing during each year of unification in each county.

d) Surveys of Adult Participants in Court Cases: Surveys will be collected from the perspective of adult participants in court cases. The main themes in the survey include identifying types of multiple cases, service delivery and the level of understanding about the court proceedings. Data will be compared between individuals who had cases in a mentor court to individuals who had cases in the courts before unification was implemented.

e) Inventory of Services: An inventory of services will be collected annually from each court to provide a snapshot of services throughout the project. Collecting these data at multiple points in time will allow for an analysis of changes in the services available to families, as well as their level of accessibility.[39]

(iii) *Confidentiality*

While much of the information likely to be included in a unified family court is subject to statutory and constitutional limits on disclosure,

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[39] California Administrative Office of the Courts Center for Families, Children and the Courts, Overview of Unified Courts for Families Mentor Court Program Evaluation 4-12 (2003).

California's mentor courts are particularly interested in issues of confidentiality as raised in the context of unified family courts. For example, the question of whether all information gathered in one court proceeding is discoverable by the parties in any other court proceeding raises a number of issues. Is a litigant prejudiced if a judicial officer in one setting learns information from another proceeding that the litigant believes is irrelevant? Consequently, each court is involved in developing formal protocols to guarantee that litigants and attorneys are aware of the information available to the judicial officer and ensuring that written and verbal notices regarding limitations on confidentiality are made available to parties.

In addition, the maintenance of records and files for a unified family court presents unique challenges for court operations. Simply labeling a file "confidential" does not go far enough to provide confidentiality protections under California law. California courts are considering several strategies, including one case file for multiple, related cases that is kept confidential if any one of the related cases (such as a juvenile case) is confidential. In another strategy under consideration by California courts, a court keeps separate files for each action, but it maintains a separate unified family court file that references the other cases.

4. SUMMARY OF SELECTED BEST PRACTICES FROM MARYLAND AND CALIFORNIA

1. Establish a unified approach to family justice across the jurisdiction, which is achieved in different ways:

    a. Create the unified family court structure in major population centers, with all communities having access to the same range of services and case management approach (Maryland); or

    b. Modify some elements of the unified family court depending on local needs, but maintain core principles (California).

2. Promote and develop court-supplied or court-connected services. Both Maryland and California strive to meet the particular service needs of their litigants, which needs may not be uniform across the states. These courts recognize, however, that certain services are essential to all family court litigants, such as assistance to unrepresented litigants and mediation,

while other services must be tailored to the unique needs of the population, such as substance abuse services in areas where this is a particular problem.

3. Create the position of a Family Services Coordinator, as used in Maryland, to identify community resources and needs in each court location. The resources are brought to the unified family court's attention so that the court can connect families and children to any existing services they might need. In addition, the court on its own can attempt to supply needed services or can assist community organizations to develop these services, thereby fostering a court/community collaboration.

4. Both Maryland and California also strive to provide family law litigants with a one judge/one family, one judge/one case, or one team/one family approach to case management. This provides families and children with consistency and familiarity, and it enables the court to attempt to resolve the families' legal and non-legal issues more effectively and efficiently.

5. Both Maryland and California offer procedures to deal with high conflict cases. In Maryland, the appointment of a specialist trained to manage high conflict cases attempts to reduce the acrimony in each case, among other tasks. California has specific court rules to provide guidance in these cases, including mediation, comprehensive parenting plans, and protocols to determine and address family violence.

6. The development or refinement of any unified family court should include a strategic planning exercise that begins with the collaborative development of a mission statement and identification of the core values of the family justice system.

7. Unified family courts in both Maryland and California gather demographic and case-related data to identify the characteristics of the users of the family justice system. Knowing who the court's constituents are allows for the design and implementation of appropriate services. As the California data collection initiative demonstrates, it also facilitates information sharing between and among courts as necessary.

5. CONCLUSION

As evidenced by the breadth and depth of studies, evaluations, and reports dating from at least 1974 about Ontario's family justice system, court reform is an ongoing process. For the consistent and dedicated commitment to and empirical approach toward court reform in family law, Ontario is exemplary. Certainly, convening the Family Justice Summit for which this paper was originally prepared and continuing to examine whether and how Ontario can benefit from the experiences of other unified family courts demonstrate that Ontario remains receptive to improve its family justice system. Ontario's families and children stand to benefit from this worthwhile process.