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## A FAMILY COURT FOR MARYLAND:

# The Time Has Come

by Barbara A. Babb

**D**uring the past year and a half, two formal study groups—the Governor's Task Force on Family Law and the Advisory Council on Family Legal Needs of Low Income Persons—have analyzed Maryland's family law and the legal system within which it operates. While only the Advisory Council has issued its final report, both groups have endorsed the creation of a unified family court for Maryland, a single state tribunal with comprehensive jurisdiction over cases arising from family breakups and cases involving the status of children.

The Governor's Task Force, chaired by the Honorable Robert B. Watts, must submit a final report to Governor Schaefer by December, 1992. The group has investigated four areas of family law: custody and access to children; grounds for divorce; economic aspects of divorce, including child support, spousal support, and monetary awards; and the creation of a family court. The Advisory Council, chaired by Attorney General J. Joseph Curran, Jr., consists of forty-one members, including judges, masters, private practitioners, legal services attorneys, legislators, law professors, human services providers, and client representatives. Funded by a grant from Maryland

Legal Services Corporation to the University of Baltimore School of Law's Family Law Clinic, their study has focused on ways to enhance the delivery of domestic legal services to low-income clients and to change Maryland's family law to expand access to domestic legal remedies. The Advisory Council has focused on four areas: civil remedies for domestic violence; paternity, support, custody, and visitation; court access for poor persons; and the creation of a unified family court. Its final report, *Increasing Access to Justice for Maryland's Families*, published in March, 1992, details the group's research and recommendations.

While both groups have addressed the same general subject matter, they have operated from slightly different perspectives. The Governor's Task Force study concerns the broad range of family law issues as these affect individuals across all income levels, while the Advisory Council has focused on low income individuals whose income is less than fifty percent of the state's median family income. Thus, the Advisory Council has examined issues such as lack of financial resources to obtain legal assistance, lack of education to follow the formalities of rules governing court processes and procedures, lack of financial means to survive delays in adjudication and increased reliance on the court system to resolve multiple family and domestic legal problems. To avoid duplication both the Advisory Council and the Governor's Task Force have attempted to coordinate efforts wherever possible. The greatest area of overlap involves the study of

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a unified family court for Maryland. Because the Advisory Council has published its report and recommendations, this article focuses primarily on the Advisory Council's work. The interim report of the Governor's Task Force, however, suggests that its recommendations with respect to a unified family court will not vary significantly from those of the Advisory Council.

### Statistical and Anecdotal Findings

Statistical data on domestic cases filed in Maryland confirms the critical importance of this area of law. The number of domestic filings in circuit courts has increased steadily, and court officials expect this trend to continue. During fiscal year 1989-90, domestic cases (not including juvenile matters) represented 52 percent of all cases filed in circuit courts in Maryland. (Administrative Office of the Courts, 1990 Md. Judiciary Ann. Rep. 47.) In the same year the number of domestic violence filings in the district court, which has concurrent jurisdiction with the circuit court over domestic violence cases, increased over the previous two fiscal years. (*Id.* at 74, 86). Such a high percentage of cases requires judicial interest and expertise, expedient disposition of disputes, and any other reforms to facilitate efficient adjudication of domestic cases.

Cases also demonstrate issues of delay, overlapping jurisdiction, and lack of access to legal services.

- A divorcing mother of three minor children waited almost a year to be assigned a pro bono attorney after being placed on the House of Ruth's waiting list for attorneys in non-emergency cases. It took another two and a half years from the date of filing a complaint for absolute divorce with issues of custody, child support, and property distribution for the case to be resolved.
- During the course of her Circuit Court litigation, the woman appeared before two different masters, two different judges, and a court ordered mediator.
- In addition to the action for absolute divorce in the Circuit Court, the woman appeared before a District Court judge on two occasions to obtain an order of protection against her abusive husband.

- A grandmother sought an order of third-party guardianship for her two young grandsons after her son, the children's natural father, became in-



carcerated. The children's natural mother was 16 years old and involved in a delinquency case in the Juvenile Division of the Circuit Court. • The case was pending in the Circuit Court for over two years, and the judge only recently found a pro bono attorney willing to represent the minor grandchildren.

From the outset the Advisory Council found that delay, inefficiency, duplication, and lack of coordination all characterize Maryland's judicial system for resolving domestic disputes. These problems become particularly critical for low income clients who have fewer resources and often resort to self-help, thereby creating additional legal problems.

### Unified Family Court Studied

The Advisory Council's Unified Family Court Committee, co-chaired by the Honorable Barbara Kerr Howe and Delegate Kenneth C. Montague, Jr., conducted a comprehensive study of the current court system in Maryland, including the structure of the

system and the delivery of legal services to low income persons. The Committee determined that any reforms to improve court access to low income clients would result in benefits to the entire population of domestic law clients. The Committee contacted community services organizations, legal services providers and court personnel, including clerks, masters, and judges from various geographic and demographic areas.

The Committee first identified how and where low income clients receive information about legal procedures, remedies, available services, and referrals to free or reduced fee legal services to determine the effect of the current system on the client *before* the client enters the court system.

The Committee next examined the effect of the current court system on low income families *during* the time they are in the court system, or during the legal process. The Committee investigated the extent of low income clients' access to information about procedural rules and alternative legal remedies; the existence and length of delays before hearings and dispositions in various stages of litigation (pendente lite and final hearings); unnecessary or duplicative court procedures; docket assignment practices; and the degree of judicial interest and/or expertise in domestic cases. They evaluated the effectiveness of masters' systems, the assignment and selection of domestic judges and their level of interest and expertise, the volume of domestic cases handled by the courts, and the delays at various stages of domestic litigation.

Finally, the Committee examined the effect of the current court system on low income families *after* the disposition of legal issues. They determined the accessibility and utility of the appeal process and other post-judgment procedures; they also assessed the degree of awareness among low income individuals of the existence of the these processes and the availability of affordable legal services to assist them in this stage of litigation. The post-judgment procedures reviewed were appeal, modifications, contempt procedures, and In Bank Review under Rule 2-551. They also addressed factors such as cost, delay, lack of information or legal representation, and procedural requirements that could impede access to post-judgment remedies for low income litigants.

## Findings of the Committee

The Committee's research indicates that one of the major problems low income individuals face is lack of access to information about domestic legal rights and remedies. A low income client may identify an organization that can provide information, such as the court clerk's office or a community organization, but the subsequent course of events is uncertain. Resources often cannot provide legal information and advice because of lack of training or knowledge, because of legal mandates, or because of limited staff availability.

A related problem for low income clients is lack of access to legal representation. The complexity of family law and the lack of uniformity of the current court system mean that low income clients cannot enter or navigate the system without legal representation. Even after low income clients enter the system, the Committee's findings point to other problems that affect the clients. Most significant of these problems is the lack of uniformity of practice and procedure among jurisdictions which contributes to confusion about the proper procedural requirements in a given case. In one jurisdiction a master could hear the case, whereas, in another, a judge might hear it. In one jurisdiction, a hearing and decision could come in a fairly short time; whereas, in another jurisdiction, the case could await a hearing for months.

Clearly long delays before the disposition of domestic cases impair the abilities of low income families to resume normal living conditions. A pendente lite hearing may not occur in some jurisdictions for three months after a request. This leaves the litigant in a child support matter without financial support to feed and house the children for this period of time. Ultimately, parties caught in financially desperate conditions may forgo legal remedies available to them (i.e., civil protection orders in domestic violence cases) and return to relationships they sought to escape.

The Committee also found that litigants file a large number of post-judgment motions each year in domestic cases. This indicates lack of finality or satisfaction with the decisions of the courts. The length of time between instituting the proceeding and the issuance of an order on the motion may be as great as three months.

## Other States' Experience

Against this background the Unified Family Court Committee instituted the second aspect of its study: the identification and investigation of existing family courts in other states, including Delaware, Hawaii, Kentucky, Louisiana, Mississippi, New Jersey, New York, Rhode Island, South Carolina, Texas, Vermont, Virginia, and the District of Columbia. This focus enabled the Committee to determine whether any aspects of existing family courts might provide ideas for resolving some of Maryland's problems. The Committee prepared an extensive questionnaire which it administered to clerks, judges, attorneys, litigants, and budget administrators in selected states with family courts. In addition, Committee members made on-site visits to family courts in South Carolina and Delaware. Committee members who practiced in the New York Family Court drew upon their experiences and observations.

The Committee's study revealed that, prior to establishing their family courts, other states' systems suffered from the same inadequacies as Maryland, including fragmented jurisdiction over different types of domestic and family matters; lack of judicial interest and expertise in domestic law; heavy caseloads in courts of general jurisdiction, resulting in excessive delays in adjudication; and lack of coordination of court-related and support services to address family problems. The Committee found that family courts with comprehensive jurisdiction over all family and domestic matters, including juvenile delinquency and child abuse and neglect, represented the most successful models. This success derived, in part, from the reduction of duplicative proceedings and inconsistent orders, thereby resulting in time and money savings for the parties and the state; diminished confusion and greater satisfaction on the part of litigants; and a holistic approach to family legal problems.

The Committee found that creation of a family court with independent facilities and staff resulted in efficient administration of domestic matters. The family court contributed to the recognition of domestic disputes as important and deserving of independent, unique treatment. Respondents from states with independent family courts indicated an additional benefit—innova-

tive administrative approaches that might not exist if the family court were bound by the existing rules of courts of general jurisdiction.

## How Does A Family Court Help?

To increase access family courts have established simplified procedures that provide litigants sufficient guidance to initiate and proceed in domestic cases with or without the assistance of counsel. These include simplified pleading and information packets to enable litigants to initiate a proceeding. They also include establishment of a separate clerk's office, where trained, capable staff provide pleading and other forms to litigants and explain these forms to aid in litigants' completion of the forms.

Existing family courts use various case assignment techniques to keep the same judge on a case from initiation through completion. Although some states assign the same family to the same judge for all cases involving the family, the preferred procedure assigns one judge to one case rather than to one family. This provides judicial economy because litigants need not reiterate the facts before various judges. It prevents judge and forum shopping, results in more consistent domestic and juvenile orders, provides holistic treatment of family problems, and contributes to a higher rate of satisfaction among litigants.

Most states with existing family courts require expertise in domestic matters from family court judges, who must participate in initial and continuing training programs. To prevent judicial burnout, some states rotate judges among different dockets within the family court; other states rotate judges among jurisdictions.

States with family courts have facilities with adequate waiting rooms, clerks' offices, and playrooms to accommodate the needs of both litigants and professionals. States accomplish this through reallocation of existing facilities and through implementation of unused state facilities.

Instrumental in the efficient disposition of cases in family courts are mediation and arbitration. Family courts address problems of delay in adjudication by imposing statutory time requirements for disposition of cases. Most adhere to the philosophy that the court should remain a tribunal for the determination of legal issues and that

outside organizations should provide related services. These family courts, however, coordinate with other service providers to offer families all necessary services but to avoid excessive involvement by the court with families' nonlegal problems.

### Conclusions

The Committee's survey of family courts in other states revealed many features that could be incorporated into Maryland's existing court structure. Implementation of each individual feature may not improve the availability of meaningful access to domestic legal remedies. Rather than adopting piecemeal some features of family courts, the Committee concluded that Maryland should establish a unified family court. The Committee did not purport to have outlined all of the details necessary for the implementation of a family court in Maryland. The Committee outlined in its recommendations, however, a set of general guidelines embodying features that should contribute to the success of the proposed family court. The Committee concluded that establish-

ment of a family court requires thorough planning and that the Committee's recommendations might serve as general parameters within which planners could operate.

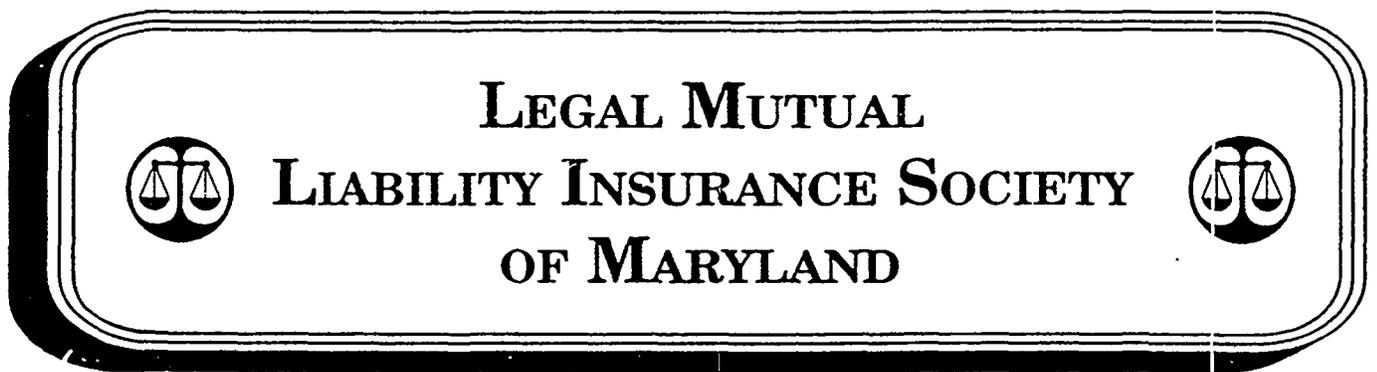
The Unified Family Court Committee also emphasized that its recommendations do not necessarily call for "new" judges, clerks, or facilities. Rather, the Committee contemplated the creation of some new "positions," which may be filled by existing judges and court personnel. The recommendations also call for "separate" facilities, which could involve reallocation of existing facilities. The Committee realized that implementing a unified family court and maintaining a separate administrative system for the family court might involve the need for additional funding. Potential savings from the benefits of a family court, such as savings in court time, should ultimately defray these costs, however.

Thus, the Advisory Council's Unified Family Court Committee has recommended that Maryland establish an independent and unified family court with exclusive, comprehensive, and uniform statewide jurisdiction over all family matters, including juvenile

delinquency and child abuse and neglect. The family court should be organized as a separate court, equal in status with the circuit court, with a separate clerk's office and housed in adequate facilities. The procedures within the unified family court should remain uncomplicated and straightforward, including the use of standardized forms. Cases should be disposed of quickly by establishing statutory guidelines and making compliance a priority. The family court bench should consist of qualified judges selected for exclusive service on the family court, and family court judges should attend training in such areas as human dynamics, child development, domestic violence, alcoholism, drug abuse. The family court should utilize mediation and arbitration services to resolve domestic disputes in appropriate cases, and the court should coordinate with existing services, both within and outside the court system.

By adopting a unified family court, Maryland can achieve the holistic approach to family legal problems that it sorely needs and that will benefit all its citizens. ■

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