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Maryland's Family Divisions Are a Model for Change

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Family Law



Maryland's Family Divisions Are a Model for Change

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Adoption of Rule 16-204 has changed how Maryland professionals handle family law cases by creating family divisions and providing mechanisms for case coordination and service referrals. Judges, lawyers, and personnel approach cases and decision making more holistically, focusing on and effectively addressing the legal and non-legal needs of Maryland's families.

In fiscal year 2014, 43 percent of all cases filed in Maryland's trial court of general jurisdiction (the circuit court) were family law cases (Court Operations Department, 2014: CC-5). Historically, Maryland courts, like many states' family justice systems, lacked a uniform structure to consolidate family law issues for an individual family. As a result, families often faced multiple hearings before different judges in different courtrooms to address a variety of issues, such as divorce, domestic violence, delinquency, and child abuse/neglect.

This system created tremendous hardship for families (particularly low-income families, many of whom were self-represented litigants) and resulted in fragmented service delivery and inconsistent decision making.

Through the leadership and dedication of former Chief Judge Robert M. Bell, in 1998 the judges of the Maryland Court of Appeals signed Maryland Rule 16-204 (see Babb, 2013: 1126). This rule created family divisions in the circuit courts of Maryland's five largest jurisdictions and transformed how Maryland courts handle family law cases.

Background of Maryland Rule 16-204

Maryland Rule 16-204 grants the family divisions comprehensive subject-matter jurisdiction over the following types of cases: “divorce, annulment, and property division; custody and visitation; alimony, spousal support, and child support; paternity, adoption, termination of parental rights, and emancipation; criminal nonsupport and desertion; name changes; guardianship of minors and disabled persons; involuntary admission to state facilities and emergency evaluations; family legal medical issues; domestic violence actions; juvenile causes, including delinquency and dependency; and civil and criminal contempt” (Babb, 2013: 1127, citing Maryland Rule 16-204).

The family divisions receive funding to provide family support services, such as mediation in custody and visitation matters, parenting seminars, and services to assist self-represented litigants. Circuit courts without family divisions also receive funds (subject to availability) for family support services. All circuit courts, including the family divisions, are required to appoint a family support services coordinator. The coordinator’s role is to compile, maintain, and provide lists of available public and private family support services; coordinate and monitor referrals; and report on the need for additional family support services or the modification of existing services (Maryland Rule 16-204).

Performance Standards and Measures for Maryland’s Family Divisions

One of the key outcomes arising from the creation of the family divisions was the crafting of a tool to assess the effectiveness of the courts’ work. An Ad Hoc Committee on the Implementation of the Family Divisions met for two years to formulate a mission statement, system values, and outcome evaluation measures. That work resulted in the publication in 2002 of

Performance Standards and Measures for Maryland’s Family Divisions (Performance Standards, 2002: 4).

The *Performance Standards* begin with a powerful statement that describes the mission of the family divisions to (p. 6):

- provide a fair and efficient forum
- resolve family legal matters in a problem-solving manner
- improve the lives of families and children who appear before the court
- make available appropriate services for the families who need them
- provide an environment that supports judges, court staff, and attorneys to respond effectively to legal and nonlegal issues

The *Performance Standards* also specify system values and intended outcomes that family divisions should promote to (p. 6):

- preserve the rule of law
- stabilize families in transition
- provide forums for prompt conflict resolution
- promote co-parenting relationships
- foster parents as the primary family decision makers
- maximize ADR methods
- provide safety and protection
- preserve family relationships where possible
- support linkages between resources and needs
- increase access to the justice system
- use judicial time efficiently
- develop a familiarity with each family
- increase cultural competency

Former Chief Judge Bell has stressed that the *Performance Standards* “represent the high standards to which we hold ourselves in serving Maryland’s families, and the standard to which we expect others to hold us” (p. 4). The *Performance Standards*, designed around the Bureau of Justice Assistance’s *Trial Court Performance Standards*, include five focus areas: 1) access to justice; 2) expedition and timeliness; 3) equality, fairness, and integrity; 4) accountability and independence; and 5) public trust and confidence. Each focus area includes standards, commentary, implementation issues, recommendations, and tools of measurement that should guide the work of the family divisions.

Family Division Accomplishments

To commemorate the 15th anniversary of the creation of the family divisions, the University of Baltimore School of Law’s Sayra and Neil Meyerhoff Center for Families, Children and the Courts (CFCC) partnered with the Maryland Department of Family Administration, Administrative Office of the Courts (AOC), to host a symposium on June 1, 2015, to examine Maryland’s family justice system. As part of the symposium-planning process, CFCC and the AOC looked at the progress made since the passage of Rule 16-204.

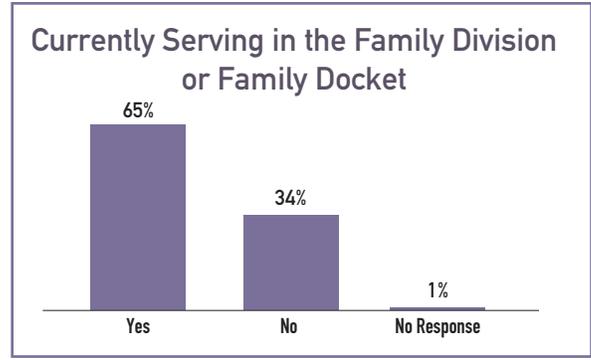
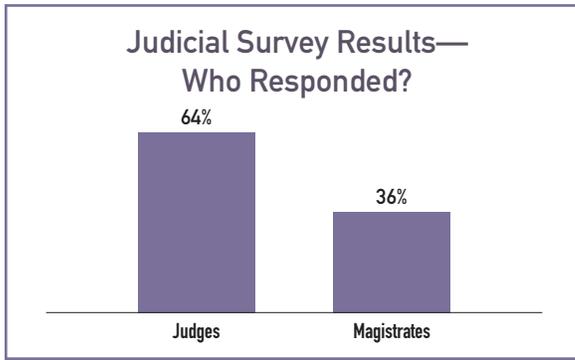
Family support services and the guidance provided by family support services coordinators have fostered Maryland’s significant progress in family court reform. For example, over the last 17 years, courts in many counties have adopted differentiated case management plans that coordinate and consolidate all legal matters involving the same family and that increase efficiency and effectiveness in the judicial process. This allows courts to resolve a family’s legal problems with fewer appearances (Kratovil-Lavelle, 2013: 2).

Additional highlights include:

- increased and improved services for families, including assistance for self-represented litigants, parenting classes, custody evaluations, referrals for counseling and anger management, domestic violence advocacy, mediation, family and individual counseling, and substance abuse assessments and referrals for treatment
- websites to help litigants access information about court processes, programs, and services
- greater supports for Spanish-speaking litigants, including domestic relations forms translated into Spanish and made available online
- a Domestic Violence Central Depository database giving courts and law enforcement real-time access to protective and peace orders issued anywhere in the state
- court-referred mediation services for low-income individuals
- community-conferencing diversion program for juvenile offenders
- standards and procedures for court-appointed parent coordinators (Kratovil-Lavelle, 2013: 3-9)

Judges and Magistrates’ Survey

In preparation for the symposium, the AOC and CFCC began a reflective journey on the first 15 years of the family divisions by surveying all Maryland Circuit Court judges and magistrates. The survey was designed to identify judicial attitudes and court practices regarding the needs of families and children in family court. Of the 200 judges and magistrates who received the surveys, 88 responded (44 percent), 64 percent of whom were judges, and 65 percent of whom served in the family divisions or on the family law docket at the time of the survey.



There were some surprising responses to survey questions. For example, only 31 percent of respondents were familiar with the *Performance Standards*, only 5 percent of whom referred to them several times, and only 3 percent of whom consulted them regularly.

The fact that so few judges and magistrates are using the *Performance Standards* is troubling. One recommendation emerging from the June symposium is that the AOC should train and ensure that family division judges and magistrates are familiar with the *Performance Standards* and integrate them into the day-to-day operation of the court.

The survey also asked, “Which, if any, of the following Family Division goals has your court or Family Division worked on in the past five years?” The leading goal was “maximizing the use of ADR (alternative dispute resolution),” at 78 percent of respondents. The next highest were providing forums for prompt conflict resolution (76 percent) and promoting co-parenting relationships (76 percent). Lowest on the list

of goals were fostering parents as primary family decision makers (56 percent), supporting linkages between resource needs and availability (48 percent), and using judicial time efficiently by providing comprehensive information to judges and masters (44 percent).

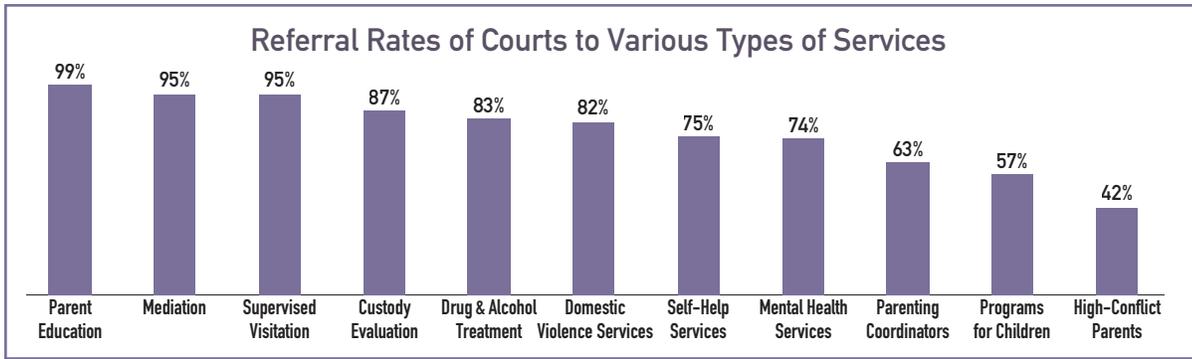
...courts in many counties have adopted differentiated case management plans that coordinate and consolidate all legal matters involving the same family and that increase efficiency and effectiveness in the judicial process.

Given the high cost of litigation and the huge numbers of self-represented litigants in family court, it is not surprising that 84 percent of judges and magistrates “strongly agreed” that the role of the family court judge is to “promote opportunities for parties to resolve disputes outside court.” On the other hand, 60 percent of the judges and magistrates who refer parties to mediation do not use a screening tool to identify family violence issues before making referrals, which should be a prerequisite before judges refer families to mediation.

When judges and magistrates were asked whether they refer parties to specific services, the top three services were parent education, mediation, and supervised visitation. The referral made least often was to programs for high-conflict parents.

The most important needs of parties in family court, as identified by judges and magistrates, were the following: 1) access to mental health services and drug and alcohol treatment, 2) alternative dispute resolution, 3) prompt and fair resolution of parties’ disputes, and 4) legal representation

or a clear understanding of the process for self-represented litigants. When asked what they saw as the appropriate role of the family court in meeting these needs, the judges’ and magistrates’ responses included 1) refer to services, 2) provide opportunities for ADR,



3) only have judges and magistrates who want to hear family law cases and know the law, and 4) not to be “social workers” and “problem solvers.” Finally, respondents were asked to indicate three actions that the courts could take to improve the process for family law cases. They responded provide more funding for services, allow one judge to hear all of the family legal issues related to one family, and increase the number of pro bono attorneys.

Survey responses overall indicate that judges and magistrates in Maryland value supporting and strengthening the family unit. Referrals to community services and screening procedures to ensure that appropriate services are put in place enable courts to offer useful tools to parties. All judges and magistrates in Maryland’s family divisions, however, must familiarize themselves with the *Performance Standards* and work to apply them routinely (p. 4). Courts must implement the standards and also must assess families on a case-by-case basis to ensure that the recommended services are appropriate for each family. Acknowledgment and application of these standards can provide consistent and effective results for families and children across Maryland.

Conclusion

Maryland has made great progress since the creation of the family divisions, particularly with regard to its holistic approach to family law cases. Rule 16-204 arms courts with many of the tools needed to give families and children the help they need to improve their lives. Significant work remains, however.

Moving forward, judges and magistrates must continue to hold themselves to the high standards set out in the *Performance Standards*. As courts evaluate cases individually, they require increased funding to expand the array of available and necessary services (particularly for substance use treatment and mental health concerns) to address the needs of children and families effectively. As the number of self-represented litigants increases and as Maryland’s demographics change, self-represented litigants and non-English speakers need additional support. Finally, all family justice system professionals must commit to ensure that Maryland’s families and children receive efficient, effective, and responsible service.

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