REPORT OF THE FAMILY LAW TASK FORCE

2013

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I. Introduction

In July 2009, the D.C. Bar Board of Governors created the D.C. Bar Family Law Task Force ("Task Force") to develop recommendations to expand access to justice and improve the administration of justice in the two branches of the Family Court of the Superior Court of the District of Columbia ("Family Court") where indigent parties do not have a right to appointed counsel – Domestic Relations and Paternity and Child Support.

Our court and bar have a unique and nationally-admired relationship, often working hand-in-hand to address the court's demanding caseload and the challenges unrepresented litigants encounter as they attempt to navigate the complex judicial system. This collaboration dates back to at least 1991, when the D.C. Bar created the first family law task force, the Task Force on Family Law Representation. By combining the work of that first task force with the passage of the Family Court Act of 2002 and the resolve of our judiciary to be *open to all*, *trusted by all* and provide *justice to all*, our Family Court has become a national model of excellence.

However, as expressed in the District of Columbia Court's *State of the Judiciary 2011*, ensuring that all District residents have access to justice is "an increasing challenge for the D.C. Courts."[1] First, the vast majority of litigants are unrepresented by counsel simply because they lack the resources to retain private counsel. Our legal services community already is at capacity and unable to accept most of the new clients who qualify for their services. Even though D.C. has a robust pro bono culture and our family law bar does an exceptional amount of pro bono work, pro bono programs often find it challenging to recruit volunteers to accept pro bono family law cases. Other challenges exist for litigants who live in poverty or are low-wage earners and require significant planning to attend court. Missing work, paying for transportation, and arranging for child or elder care pose real challenges and sometimes bring dire consequences. In addition, limited English-proficient litigants face special challenges when attempting to navigate the judicial system, as do those with low literacy skills, mental health issues, or physical disabilities. All of this is significantly exacerbated when matters are not timely resolved, and litigants and counsel must endure long court days, unnecessary court appearances, excessive delays between hearings, and/or long waits to obtain decisions.

[1] District of Columbia Courts *State of the Judiciary 2011*, p. 14.

Although challenges exist, our court has "maintained a steady focus on identifying and reducing such barriers to justice."[2] The Family Court is driven by its mission "to protect and support children brought before it, strengthen families in trouble, provide permanency for children and decide disputes involving families fairly and expeditiously while treating all parties with dignity and respect."[3]

The D.C. Bar Family Law Task Force has developed the below recommendations in furtherance of the Family Court's mission, and in recognition that there are roughly 3,500 cases awaiting disposition in the Domestic Relations and Paternity and Child Support Branches alone.[4]

Our recommendations suggest expanding meaningful services for litigants, especially pro se litigants, in order to improve their experiences in Family Court, and further demonstrate that the court is working effectively to protect children and strengthen families. Our recommendations also suggest new court efficiencies that have succeeded in other similarly situated jurisdictions that advance the fair and expeditious administration of justice.

Although some of the recommendations may require an initial commitment of new resources by the court, the Task Force believes the proposed changes would pay for themselves quickly by reducing judicial caseloads and actual court time for resolving disputes. A number of the recommendations would require only administrative changes with little, if any, concomitant cost. And still other recommendations are included in this report knowing that resources currently are unavailable, but with the hope that funds may become available in the near future.

We emphasize that the recommendations are not solely proposed for the court to implement. It is anticipated that the D.C. Bar, the D.C. Bar Pro Bono Program, and the family law bar will work collegially and cooperatively with the court to achieve many of the proposals recommended by the Task Force.

II. Methodology

The D.C. Bar Family Law Task Force was created in July 2009 by then-D.C. Bar President Kim M. Keenan to develop recommendations to expand access to justice and improve the administration of justice in the Domestic Relations and Paternity and Child Support Branches of the Family Court of the Superior Court of the District of Columbia. The Task Force was charged with reviewing and researching court rules and processes, standard attorney practices, and existing support and services for litigants in both the District and other jurisdictions.

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[2] *Id*.
[3] Family Court Transition Plan, Vol. 1, p. 7 (April 5, 2002).
[4] District of Columbia Courts Annual Report 2012, Statistical Summary, p. 4. This number does not include post-judgment cases that are still undisposed.

The Task Force was created with the enthusiastic support of the Superior Court, which assigned the presiding judge of Family Court to serve as its court liaison to the Task Force. The co-chairs of the Task Force and D.C. Bar Pro Bono Program staff also met several times with court leadership to discuss the Task Force's progress.

The D.C. Bar Board of Governors approved the creation of the Task Force and appointed two co-chairs, Rita M. Bank and Margaret "Meg" J. McKinney, and 10 members (see Appendix A). The co-chairs and members of the Task Force were selected because of their expertise in family law, their varied practices and perspectives, their leadership roles in the D.C. Bar Family Law Section and/or their experience recruiting pro bono lawyers to staff family law matters. Some of the original members of the Task Force resigned for various reasons before this report was finalized. New members were appointed.

Starting in March 2010, members of the Task Force met with several "stakeholder" groups to listen to their suggestions for improvements in the Domestic Relations and Paternity and Child Support Branches. The groups included the D.C. Access to Justice Commission; D.C. Appleseed; D.C. Bar Family Law Section; D.C. Consortium of Legal Services Providers and its Family Law Casehandlers; Domestic Relations and Paternity and Child Support Subcommittee of Superior Court of the District of Columbia; Family Court Implementation Committee, Child Support Task Force of Superior Court of the District of Columbia; Family Court Judicial Officers of Superior Court of the District of Columbia; D.C.'s Office of the Attorney General, Child Support Services Division; and Paternity and Child Support Branch Rules Committee of Superior Court of the District of Columbia.

A Survey Working Group chaired by Professor Joan H. Strand and supported by a George Washington University social sciences graduate student was simultaneously created to draft written surveys for attorneys who practiced in the Domestic Relations Branch and/or Paternity and Child Support Branch (see Appendix C). The survey was intended to reach private attorneys who receive compensation for services, legal services attorneys and law school clinical professors, private or government attorneys who provide pro bono representation, assistant attorneys general who work in the Child Support Services Division, and other attorneys with current or past experiences in Family Court.

The survey was distributed online through Survey Monkey and posted on several listservs, including the D.C. Bar Family Law Section, the D.C. Consortium of Legal Services Providers and its Family Law Casehandlers, the Family Court Trial Lawyers Association, and the D.C. Bar Pro Bono Program's Pro Bono PARTnership (PART). It also was sent to volunteers of the D.C. Bar Pro Bono Program and members of the family law practice area of probono.net/dc. The survey was available from October 22, 2010 until November 17, 2010.

The Survey Working Group also drafted an interview survey in English and Spanish directed at pro se litigants to learn about their experiences in the Domestic Relations Branch and/or Paternity and Child Support Branch (see Appendix D). Over a two-week period in November 2010, members of the Task Force, students from Georgetown University Law Center, and interns at the Legal Aid Society of the District of Columbia interviewed pro se litigants in Superior Court with child support, custody, visitation, and divorce cases.

The Survey Working Group prepared an analysis of the results of each survey question, which included identifying key issues of concern and suggestions for improvement. An Executive Summary (see Appendix B) was presented to the full Task Force and to the chief judge and Family Court presiding judge of Superior Court.

Members of the Task Force also conducted extensive research on current services offered to litigants in the Domestic Relations and Paternity and Child Support Branches and on innovative models in other jurisdictions that could increase services for pro se litigants and the number of lawyers – both pro bono and paid – representing litigants in our Family Court.

The Task Force then began the arduous task of developing the set of recommendations below. Each recommendation was considered and discussed thoroughly, and each was drafted and redrafted several times.

III. Recommendations

A. Expanding Access to Justice

When litigants in domestic disputes do not have adequate access to justice, which includes access to our court and its services, their family situation is likely to deteriorate even further. As stated in the Court's *State of the Judiciary 2011*, "access to justice compels the Courts to make it as easy as we can for people in the community to come to court, seek redress, and use the services available to them."[5] The D.C. Bar Family Law Task Force recommends expanding our community's access to justice by engaging more lawyers, both paid and pro bono, to provide a range of services, including representation and pro se assistance; by increasing the amount and accessibility of legal and court information available to families, regardless of their spoken language; by focusing more resources on successful mediation programs; and by expanding other services to support families in disputes. When litigants have greater access to justice, cases are resolved more quickly and often with less judicial involvement. The Task Force makes the following recommendations to the court:

1. Pro Bono Representation:

[5] *State of the Judiciary 2011*, p. 3.

a. Support the D.C. Access to Justice Commission's efforts to secure District appropriated Access to Justice funding for civil legal services that helps sustain and expand many of the programs at legal services organizations that provide services to litigants in Family Court.
b. Support the D.C. Bar and D.C. Bar Pro Bono Program's efforts to recruit and train many more pro bono lawyers to handle family law matters. Although staffing family law cases with pro bono lawyers always presents challenges, the D.C. Bar and D.C. Bar Pro Bono Program are committed to significantly increasing the pool of volunteers. We believe implementing many of the recommendations below will encourage and support greater involvement by private and government lawyers.
c. Support the legal community's exploration of new models to deliver legal services that reach more unrepresented litigants with family law disputes.

2. Limited Appearances: Permit limited appearances and unbundling of legal services to facilitate meaningful access to counsel for litigants of limited means who cannot afford or who may not need legal representation for every aspect of their case. A Limited Scope Working Group convened by the D.C. Access to Justice Commission and the D.C. Bar Pro Bono Program currently is drafting recommendations for the court to consider, introducing court-wide practices for limited appearances. Institutionalizing limited appearances will increase the number of paid lawyers who could appear for critical aspects of a case and of pro bono lawyers who previously were concerned about the protracted nature of family law cases.

3. "Court-Based" Project: Establish a "court-based" project in the Domestic Relations Branch, similar to what successfully exists in the Paternity and Child Support Branch, to provide pro se litigants advice and limited representation when attempting to settle their case, arguing discrete motions, and/or resolving legally complex issues. This project would be a collaboration between the court, legal services providers (including the D.C. Bar Pro Bono Program), and law firms.

4. Court Facilitator/Attorney Negotiator Program:
   a. Dedicate court staffing to institutionalize and coordinate a Court Facilitator/ Attorney Negotiator Program in the Domestic Relations Branch. Anecdotal evidence shows that when both parties are present and participate in the Court Facilitator/ Attorney Negotiator Program, at least one-third of cases are wholly or partially resolved at the initial hearing.[6] Although pro bono attorneys coordinate and staff the existing program, any expansion (and possibly even maintenance) of the program will require the dedication of court staff.

[6] Statistics are not available for the Court Facilitator/ Attorney Negotiator Program in the Domestic Relations Branch because it is coordinated and staffed only by volunteers.

b. Consider expanding the Court Facilitator/ Attorney Negotiator Program to appropriate matters before the Paternity and Child Support Branch.

5. Family Court Self-Help Center: Expand the Family Court Self-Help Center to provide services at an office co-located near the Paternity and Child Support Branch hearing rooms on the first floor so litigants have a more readily available option of obtaining help from the Self-Help Center on the same day as their court appearances and before their cases are heard by a judicial officer.[7]

6. Multi-Door Dispute Resolution Division:
   a. Convene a comprehensive working group comprised of Multi-Door Dispute Resolution Division staff, family law practitioners, litigants, and judicial officers to develop recommendations to improve court-based mediation services.[8]
   b. Strengthen the Multi-Door Dispute Resolution Division by including more mediators with special knowledge about childhood development and the effects of separation and divorce on children.
   c. Schedule Multi-Door mediations at the time of intake or initial hearings to reduce significant delays.

7. The Office of the Parenting Coordinator (OPC): Reinstate and explore opportunities to fund the Office of the Parenting Coordinator and develop innovative models that will leverage the OPC's reach within the community, including recruiting volunteer counselors and developing intensive shorter-term programs and group meetings. The OPC has proven critical to resolving high-conflict custody matters through mediation, parent education, conflict resolution, and case management.

8. Supervised Visitation Center:
   a. Expand the hours and days the court's Supervised Visitation Center is open. Provided the necessary intake by the parties has been completed, there should not be a wait to commence visits at the center for parents with court-ordered, supervised visitation. At times, non-custodial parents' access to their children has been hindered by having to wait weeks before the center is able to accommodate the court-ordered visitation due to the high volume of families.
   b. Expand the locations of the court's Supervised Visitation Center so at least one center is located east of the Anacostia River, where many litigants reside.

[7] Many pro se litigants do not currently access the services offered at the Family Court Self-Help Center because the Center (JM-Level) is located on a different floor than their courtroom, and they are concerned about leaving the area of their courtroom and missing their hearing.

[8] We are aware that the court is engaged in an innovative pilot program to explore shuttle mediation and video-conferencing in cases involving domestic violence.

9. Program for Agreement and Cooperation (PAC): Extend child care services to participants of the mandatory PAC.[9] Alternatively, the court should permit participants of PAC to select the dates they wish to attend and offer weekday and/or evening classes to accommodate childcare responsibilities.

10. Language Access: Continue the court's efforts to increase access for limited English proficient litigants by implementing a comprehensive language access policy based on the American Bar Association's *Standards for Language Access in Courts*.[10]

11. Access to Information: Increase access to legal and court information.
    a. Post Domestic Relations, Paternity and Child Support (when adopted), and General Family Court rules on the court's website. It is difficult for pro se litigants to find the Rules in order to understand what is required of them.
    b. Expand further access to computers for pro se litigants in and near the Domestic Relations and Paternity and Child Support courtrooms on the first floor so they may use the D.C. Child Support Guideline Calculator, as well as access the court's website, the online resource Lawhelp.org, and the interactive pro se pleadings (recommended below).[11]
    c. Grant remote access to unsealed Domestic Relations and Child Support docket entries without divulging highly sensitive information.
    d. Issue an administrative order that permits review of a Paternity and Child Support court file, subject to D.C. Code §16-2348, by an attorney who has a written release signed by an authorized parent, even though that attorney is not the attorney of record.
    e. Monitor whether authorized parties and counsel are provided efficient access to court case files, and make adjustments as necessary.
    f. Provide access to audio recordings of hearings on an expedited basis.
    g. Consider developing easy-to-understand judicial narratives for specific situations (e.g., colloquy when adjudicating paternity, entering divorce decree, etc.) that will provide comprehensive and consistent information to litigants so they fully appreciate the proceedings.

12. Develop Additional Tools for Pro Se Litigants:
    a. Explore the development of pro se discovery forms in the Domestic Relations and Paternity and Child Support Branches. This could be a collaboration

[9] Children who are at issue in contested custody cases and are six through 15 years of age must attend the Saturday parenting education seminar. Children who are younger than six are not permitted to attend, but no child care is provided by the court.

[10] American Bar Association, *Standards for Language Access in Courts*, Standing Committee on Legal Aid and Indigent Defendants, Feb. 2012.

[11] Although the Family Court Self-Help Center has plans to provide computer access in the Center (JM-Level), many pro se litigants are concerned about leaving the area of their courtroom and missing their hearing.

among the court, legal services providers (including the D.C. Bar Pro Bono Program), and family law bar.

b. Support the development and use of online interactive pro se pleadings to assist pro se litigants in the Domestic Relations and Paternity and Child Support Branches. Model pro se pleadings already exist and strengthen the services provided by the Family Court Self-Help Center. Developing online interactive pleadings will increase the center's efficiency and capacity to serve more customers, as well as increase the number of unrepresented litigants able to complete their own pleadings without the assistance of lawyers. The D.C. Bar Pro Bono Program already has invested a great amount of time and resources to developing online interactive pro se pleadings, and plans to present its family law forms later this year.

c. Increase the number of and access to easy-to-understand pro se guides, such as the family law "pull sheets." This could be a collaboration among the court, legal services providers, including the D.C. Bar Pro Bono Program, and family law bar.

d. Expand the use of multilingual informational videos about the court, including on the court's website and in the Family Court Self-Help Center.

B. Improving the Administration of Justice

There are about 3,500 cases awaiting disposition in the Domestic Relations and Paternity and Child Support Branches of the Family Court. Associated with those cases are anxious families, including vulnerable children, living in limbo while the judicial process is at work. The impact of contested litigation on families can be devastating and requires the court's continuing commitment to resolve these cases fairly, efficiently and in a timely manner by utilizing existing, and implementing new, best practices in case management. The D.C. Bar Family Law Task Force makes the following recommendations to the court:

1. <u>Domestic Relations Case Manager:</u> Employ a case manager to ensure all docketed Domestic Relations hearings are ready to proceed before the parties appear for their scheduled hearings, including confirming proper service and the completion of home studies, mental health examinations and other court-ordered actions. This will greatly reduce unnecessary appearances, which are especially costly for hourly and low-wage earners, and allow legal services attorneys and pro bono attorneys to serve more indigent clients. A designated case manager would not only benefit parties, but would also increase judicial efficiencies by having judicial officers only preside over those cases ready to proceed. There are different models of how to create this position, including detailing an existing employee on a trial basis to explore the potential benefits without incurring additional cost.

2. Comprehensive Case Management and Scheduling Plan: Implement and consistently follow a compulsory Domestic Relations Comprehensive Case Management and Scheduling Plan. This would ensure cases are decided in a timely manner and without unnecessary delay, and this approach would facilitate consistency among calendars. The Task Force believes that the 2012 Case Management Plan reduces what is expected of judicial officers and likely will lead to more delays and uncertainty among litigants and advocates about how their cases will progress. The Task Force urges the Court to reinstitute the substance of its original 2008 Case Management Plan (and update the roster of judicial officers) as well as: 1) address when trials are scheduled; 2) discourage the automatic scheduling of multiple status hearings simply to monitor the actions of the parties; 3) establish guidelines for issuing timely written decisions; 4) simplify discovery practices for pro se litigants by having mandatory/automatic disclosures, which include pro se forms available on the court's website; 5) require that routine orders be electronically prepared, printed, and filed within one (1) business day of the order being issued from the bench; and 6) establish a mechanism so litigants have some recourse when the Comprehensive Case Management and Scheduling Plan is not followed and cases languish for extended periods of time.

3. Service of Process: Establish a three-pronged process in the Domestic Relations Branch, and if successful in appropriate matters in the Paternity and Child Support Branch, to address the constant delays caused by service of process issues, especially when litigants are unrepresented: 1) Consistently provide unrepresented litigants who file complaints an easy-to-understand "fact sheet" that guides them through the service process, including the necessity of filing an affidavit of service (e.g., the Family Court Self-Help Center's *Serving Court Papers*). Also provide a blank affidavit of service form to avoid the confusion often caused by the current *Return of Service* format. (2) If there is no proof of service filed within two weeks of a scheduled initial hearing, the case manager contacts the litigant to inquire about the status of service. (3) If the litigant needs more time to serve the opposing party, the case manager continues the matter so the court and litigant could avoid unnecessary appearances. If the litigant asserts to the case manager that the opposing party is evading service, the case will be heard as scheduled.

4. Procedural Motions: Establish a special docket or particular day on each calendar to expeditiously hear procedural motions (e.g., motions to continue and discovery disputes).

5. Guardians Ad Litem Practice Standards: Convene a committee of family law practitioners and judicial officers to develop practice standards for guardians ad litem in contested custody disputes, similar to how the court convened a committee to develop practice standards in the Juvenile and Neglect Branch. The

Task Force endorses the practice standards recommended by the Council for Court Excellence,[12] which are consistent with the American Bar Association Model Standards of Practice.

6. Home Studies: Adopt standards consistent with those of the American Psychiatric Association and the Association of Family and Conciliation Courts that outline the proper procedures for requesting, receiving, and considering home studies and the necessary qualifications of those conducting home studies. Moreover:
   a. Explore new models to prepare custody evaluations, including using professionals with advanced degrees in social work and/or counseling to conduct investigations and issue reports.
   b. Require that home studies be completed on time or at the very least, continue hearings when home studies are delayed without the necessity of appearances by the parties.
   c. Order, when appropriate, psychological testing or mental health assessments contemporaneously with home studies to avoid unnecessary delays.
   d. Convey clearly to the parties in Domestic Relations cases the types of evaluations being ordered, the purpose of each ordered evaluation, and how the court will consider the evaluation.

7. Domestic Relations Bench Book: Update the Domestic Relations Bench Book to incorporate recent changes in the law and new(er) resources available to litigants, including information about the Attorney Negotiator and ADR programs.

8. Financial Statement Form: Revise the financial statement form to make it more litigant-friendly. We recommend that the Domestic Relations Subcommittee be asked to review and revise this form.

9. Technology: Explore the use of technology to provide assistance to pro se litigants.
   a. Automate forms used frequently by judicial officers (e.g., the "four-part" child support order), court personnel and attorney negotiators. The automation process could be a collaboration among the court, D.C. Bar Pro Bono Program, and family law bar.
   b. Explore the use of E-mail and/or texting to provide notices to litigants and counsel (e.g., continuances).

10. Docketing Systems: Continue to pilot new Paternity and Child Support docketing systems that reduce delays, including the staggered dockets, and collect data in order to evaluate and make necessary adjustments to any new court action taken to improve the administration of justice. The Task Force applauds the court's

[12] Council for Court Excellence, *Proposed District of Columbia Practice Standards for Lawyers Representing Children in Custody, Visitation, and Other Domestic Relations Branch Cases*, July 2011.

implementation in 2013 of staggered dockets on all three Paternity and Child Support calendars to reduce systemically the wait times for litigants.

11. Judicial Officers and Court Personnel: Continue to train judicial officers and court personnel on special issues that frequently arise when presiding over and dealing with pro se litigants, many of whom live in poverty, have mental illness, or are limited English-proficient.

C. Exploring Other Initiatives

The D.C. Bar Family Law Task Force recognizes that the court's financial resources limit what it can achieve at any one time. Therefore, the Task Force makes the following recommendations, to be considered in the future as resources become available:

1. Court Hours: Extend court hours to evenings and/or weekends or stagger its calendars to accommodate litigants who have extraordinary challenges attending court during business hours, which mostly include low-wage and hourly-wage earners.

2. Court-Wide Coordinator of Pro Se Services: Employ a Court-Wide Coordinator of Pro Se Services to expand, centralize, and coordinate all court-based services to self-represented litigants.

3. Right to Counsel: Monitor the success of other jurisdictions that guarantee the right to counsel in civil cases, and carefully consider implementing right to counsel in certain Domestic Relations and Paternity and Child Support cases. The Family Law Task Force acknowledges the 2006 American Bar Association resolution urging states to provide counsel to low-income litigants in proceedings involving basic human needs, including child custody and sustenance. In family law matters, low-income parents or caregivers may be at a striking disadvantage when unrepresented by counsel, and yet the vast majority of litigants in these cases lack representation. Pro se parents and caregivers often lack critical knowledge of the legal standards and practices involved in litigating a case for custody of a child. Because the ability to raise and parent a child is among the most fundamental of rights, the absence of counsel for low-income litigants may cause unnecessary harm to families. For example, restricted visitation orders can in essence operate as termination of parental rights. In addition, parents, caregivers, and children all benefit when child support orders are established quickly and at the appropriate amount, which happens much less frequently when parties are unrepresented. Providing counsel in child support cases helps to ensure that custodial parents receive adequate support and that noncustodial parents are not burdened with unreasonable debts they are unable to repay.

IV. Conclusion

The Family Court of the Superior Court of the District of Columbia is a national model of excellence because of those who lead and preside over it. We have a chief judge, presiding and deputy presiding judges, associate judges and magistrate judges who have implemented reforms over the years to expand access to justice and improve the administration of justice. We also have a dedicated family law bar that provides an enormous amount of pro bono services to the court and to otherwise unrepresented litigants. It is truly impressive what we have achieved by working together to overcome the challenges of our time, as evidenced by the innovative and meaningful projects instituted at the court since the original 1991 Task Force on Family Law Representation. We are excited to work with the court again to address today's challenges, and have no doubt that new and creative ventures are on the horizon. There is a reason our Family Court is a national model of excellence that is *open to all*, *trusted by all* and provides *justice to all*.