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## REPORT OF THE FAMILY DIVISION REVIEW COMMITTEE

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Report of the Family  
Division Review Committee

Submitted By:

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Court of Appeals

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I. Introduction; Methodology

In House Bill 425 (1993 Md. Laws, ch. 198), the 1993 General Assembly declared as a matter of public policy that family, domestic, and juvenile matters "be treated in the judicial system as equally important as other matters, both civil and criminal." It further directed that in order to "better enable the courts to handle family, domestic, and juvenile matters in a more coordinated, efficient, and responsive manner" there was to be created a Family Division in each circuit court "where the creation of a Family Division is feasible." Throughout the legislation, the General Assembly conditioned the creation of a Family Division upon its "feasibility," giving consideration to "all operational aspects," including "the costs associated with and essential to the efficient operation of a Family Division." In this regard, the statute specified that the Chief Judge of the Court of Appeals "may establish a Family Division in each circuit court," with the provision, however, that he first consult with the administrative judge of the county. The legislation provided that the Chief Judge of the Court of Appeals "may assign any or all of the following matters to the Family Division:

- (1) dissolution of marriage, including divorce, annulment, and property distribution;
- (2) child custody and visitation, including proceedings under the Maryland Uniform Child Custody Jurisdiction Act;
- (3) alimony and child support, including proceedings under the Maryland Reciprocal Enforcement of Support Act;
- (4) establishment and termination of the parent-child relationship, including paternity, adoption, termination of parental rights, and emancipation;
- (5) juvenile causes under Title 3, Subtitle 8 of this article;
- (6) domestic violence proceedings under Title 4, Subtitle 5 of the Family Law Article;
- (7) criminal nonsupport and desertion, including proceedings under Title 10, Subtitle 2 and Title 13 of the Family Law Article;
- (8) name changes;
- (9) guardianship of minors and disabled persons under Title 13 of the Estates and Trusts Article;
- (10) involuntary admission to State facilities and emergency evaluations under Title 10, Subtitle 6 of the Health-General Article; and
- (11) family legal and medical issues, including decisions on the withholding or withdrawal of life-sustaining medical procedures."

The legislation directed the Chief Judge of the Court of Appeals, with the assistance of other specified groups, to make a

study of the Reports of the Governor's Task Force on Family Law and the Advisory Council on Family Legal Needs of Low Income Persons and to develop an implementation plan for a Family Division in each circuit court "where the creation of a Family Division is feasible."

The Review Committee, composed largely of representatives of the designated organizations, was appointed to assist the Chief Judge in carrying out that assignment. The members of and consultants to the Review Committee are set forth in Appendix A. In his May 26, 1993 Memorandum to the members of the Review Committee, Chief Judge Murphy defined the basic working premise of the Committee as follows: "If feasible, taking into account the costs and all operational aspects, there shall be a Family Division in each circuit court, pursuant to a plan which recognizes that family-type cases within the Division's jurisdiction will be treated as of equal importance with all other cases within the circuit court's jurisdiction." In that regard, Chief Judge Murphy used the common dictionary definitions to define the concept of "feasibility" -- essentially, "capable of being managed, utilized or dealt with successfully."

On this premise, the Review Committee was necessarily required to devote particular attention to (1) the feasibility of actually achieving the underlying legislative objective of greater coordination, efficiency, and responsiveness in dealing with these kinds of cases through the mechanism of a Family Division within each circuit court, and (2) if it appeared that that objective could not

feasibly be achieved through the mechanism of a Family Division, explaining why and considering what other mechanisms could be used to achieve the legislative goals.

To assist in that endeavor, the Review Committee was divided into three subcommittees -- one to look broadly at how a Family Division might be structured, what its jurisdiction would be, and the kind of judicial resources such a division would need in order to manage its caseload efficiently; one to examine the kinds of other personnel resources such a division would need in order to provide the desired level of comprehensive service to families; and one to consider, in particular, the advisability and practicality of developing uniform forms for use in the processing of domestic and family-related cases. Each of those subcommittees met and filed a report containing its findings and recommendations. In addition, the Administrative Office of the Courts prepared comparative budget projections for FY 1995 based on three models (1) a distinct and structured Family Division operating within the Circuit Courts for Baltimore City and Anne Arundel, Baltimore, Montgomery, and Prince George's Counties, with comprehensive jurisdiction as outlined in HB 425; (2) an expedited case management model not involving a distinct, structured Family Division but including, as part of its comprehensive jurisdiction, full and exclusive jurisdiction over domestic violence cases; and (3) an expedited case management model, as in (2) above, but continuing the concurrent jurisdiction of the District and Circuit Courts over domestic violence cases.

The full Review Committee reviewed the three subcommittee reports and the AOC comparative budget projections. As part of that review, the Committee considered a number of operational alternatives to a separate, structured Family Division.

## II. Identified Deficiencies in Present System

"Feasibility" has to be considered in a relational context. Whether a Family Division is feasible depends almost entirely on what it is expected to achieve, for that will at least influence, if not control, its structure, jurisdiction, and operational and resource requirements. In attempting to define those achievement expectations, the Committee began by examining the perceived deficiencies in the present system. What is it that, through the device of a Family Division, the Legislature was hoping to correct? The theory, of course, is that one must first identify the problem before proceeding to devise a method to correct it.

The reports of the Governor's Task Force on Family Law and the Advisory Council on Family Legal Needs of Low Income Persons make clear that there was a reasonably based perception that family-related cases are not being handled efficiently, fairly, and with the principal objective of reducing, rather than increasing,

the area and level of conflict.<sup>1</sup> Somewhat more particularly, the Review Committee concluded that:

- (1) the resolution process is often time-consuming, expensive, and cumbersome, with some aspects of the dispute being adjudicated more than once;
- (2) proper attention is not being given to child-related issues, which are being allowed to fester as part of other aspects of a family-law dispute;
- (3) there is inadequate systemic resort to non-judicial resolution techniques (ADR) that might provide better, quicker, cheaper, and less acrimonious solutions to many of these kinds of cases;
- (4) there is inadequate coordination and consolidation of litigation involving the same family — a case, or several cases, involving the same family may be dealt with by different judges or masters, or even by different courts — thus inhibiting a

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<sup>1</sup> These groups based their conclusions on the procedures in being during the time they made their respective studies. Some of the circuit courts have since modified those procedures to make the processing of family-related cases more efficient.

rational, coordinated, stable approach to both the litigation and the problems that spawned it;

- (5) in some instances, judges sitting on family-law cases display either a lack of interest, a lack of temperament, or a lack of understanding with respect to these cases; and
- (6) the courts are not giving proper attention to the special needs of poor people, who often cannot afford representation by counsel and need, or desire, to proceed *pro se*.

Within each of these categories, the Review Committee recognized more specific problems and deficiencies, some of which were peculiar to particular circuits.

### III. Feasibility of Resolving Identified Problems Through Separate Family Division Within the Circuit Courts

#### A. In General

In considering the overall question of feasibility, the Review Committee assumed a Family Division with the structure, jurisdiction, and basic attributes set forth or anticipated in HB 425, i.e., a separate division within the circuit court, with exclusive and comprehensive jurisdiction over all family-related cases, including domestic violence and juvenile cases, staffed by judges, clerical, and professional personnel who would "devote full time



and attention to matters under the jurisdiction of the Family [Division]." This conforms to the model for a Family Division presented to the Review Committee by its staff consultant, Professor Barbara Babb. That model also provides for the assignment of judges to the Family Division on either a permanent or long-term basis.

The principal attributes of such a division would be: (1) clearly defined exclusive "jurisdiction" over cases involving marriage termination, child custody and visitation, domestic violence, paternity, adoption, guardianship, child and spousal support, name change, withholding or withdrawal of life support, emergency admission and evaluation, and possibly juvenile (and at least CINA); (2) assignment of judges, specially selected and trained, for specified periods of at least one year; and (3) clerical, assignment, and other support staff assigned especially to that division.

Upon that conception of a Family Division, the Review Committee reached two basic conclusions:

*FIRST: That in the 16 circuit courts with fewer than four judges, there is no need for, and no advantage to, such a division, and that the usefulness and advantage of a family division in the three circuit courts with four judges is, at best, inconclusive; and*

*SECOND: That in the five remaining circuit courts — Baltimore City and Anne Arundel, Baltimore, Montgomery, and Prince George's Counties — a Family Division would be feasible*

at this time only if additional judges and support personnel were immediately available.

The validity of the first proposition seemed self-evident. Where there are three or fewer judges on the court, the assignment of one or more judges to handle only Family Division cases would create an inflexibility that would almost certainly impede the overall efficiency of the court. Strict "jurisdictional" or assignment rules would break down quickly as either the judge(s) assigned to the Family Division are needed immediately to handle other matters or, conversely, judges not assigned to the division are needed to handle Family Division matters. The movement of judges to other courts within the circuit, which is a common practice, would also be restricted. There was little sentiment on the Review Committee for creating a Family Division within those 16 circuits.

With respect to the five metropolitan circuits, the Review Committee believes that a family division, *properly supported and staffed*, could be a viable and advantageous mechanism for resolving the deficiencies noted by permitting greater coordination and consistency in managing these kinds of cases. The Committee was equally of the view, however, that *absent proper personnel and fiscal support*, the creation of a Family Division would be a mere structural change that would do little to resolve the more serious deficiencies noted. The Committee's principal focus was on the kinds of resources and operational improvements that would be necessary to make a Family Division truly effective and worthwhile, what those resources and improvements would likely cost, and the

extent to which the deficiencies could be resolved by other means at lower cost.

In considering the element of cost, the Committee was aware that the circuit courts are funded primarily by the local governments, and recent experience has shown that some of those governments are either unwilling or unable to increase their contribution to circuit courts. If the State is willing to appropriate the requisite funds to operate a Family Division in these circuit courts, great care would have to be taken to avoid inequitable disparities in wages, benefits, and working conditions among circuit court personnel in the subject counties.

One other general factor needs to be considered -- the effect of a structured Family Division on the overall operational efficiency of the Circuit Court. As noted, the underlying legislative objective was that family cases "be treated in the judicial system as equally important as other matters, both civil and criminal." As a general standard, that is both laudable and unimpeachable. That desire, however, has to be viewed in the context of (1) the Constitutional imperative of the Sixth Amendment, its Maryland counterpart, and statutory and rule provisions mandating that criminal cases be tried with the utmost dispatch, and (2) the fact that, in separate statutes, the Legislature has required that at least 42 other categories of cases also be given priority. See August 18, 1993 Memorandum from Elizabeth Buckler Veronis to Chief Judge Murphy, attached to this Report as Appendix B. One of the more extreme examples is Md. Code, art. 24, § 9-707(a) requiring that, upon request of the plaintiff, an action to recover unpaid hotel taxes be "tried as soon as the action is at

issue and shall take precedence over all other civil cases." (Emphasis added). Presumably, this includes precedence over juvenile, workers' compensation, child custody, and adoption cases, among others.

The General Assembly will need to re-examine these other statutory priorities, but even if it does, the fact is that there are and will remain other equally important calls upon the resources of the circuit courts. Not all of the statutory priorities are frivolous; criminal and juvenile cases need to retain a priority, and the court cannot shut down its general civil docket or suspend its review of administrative agency or District Court decisions in order to handle an influx of family-related cases. The assignment of judges to a Family Division must therefore take into account the needs of the Circuit Court as a whole. An inadequately staffed Family Division would not accomplish the objectives of the division; adequate staffing, on the other hand, based on the present complement of judges, is likely to impede the efficient handling of other categories of cases that are equally important by making the Family Division judges generally unavailable to assist in the resolution of those cases.<sup>2</sup>

B. Resources Required for a Family Division in the Five Metropolitan Circuits; Factors to be Considered

1. Judicial Personnel

(a) Introduction

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<sup>2</sup> The effect could be ameliorated if Family Division judges were allowed to handle other kinds of cases, to the extent they have time to do so.

In each of the five circuit courts, there are some judges who enjoy handling, and are fully competent to handle, certain categories of cases that would fall within the "jurisdiction" of a Family Division; but in none of those circuits does there currently appear to be a sufficient number of judges willing to undertake an assignment for a year or more to handle all of the kinds of cases assigned to that division and only those kinds of cases. If the goal is to have the division staffed with judges having the willingness, temperament, and special competence to sit for terms of a year or more in these kinds of cases, the fact is that a sufficient number of such judges, at least as to willingness, does not now exist.

This presents a dual problem. If "jurisdictional" lines are to be respected, judges who willingly and competently handle guardianship, adoption, divorce, or juvenile cases but do not wish to handle, on a regular and exclusive basis, other kinds of Family Division cases would have to choose whether to remain in or out of the Family Division. By remaining out, they would give up those cases they enjoy handling and handle well; by remaining in, they would be limiting their judicial practice, for the term of their assignment, to the full gamut of Family Division cases.

It is possible, of course, that, through training and a revamping of the case management system designed and effective to make the resolution of Family Division cases smoother and less contentious, additional incumbent judges could be persuaded to accept assignment to a Family Division, but there is no present assurance that that will happen. If it does not, adequate judicial staffing of a Family Division would require either the appointment

(or election) of additional judges with these special qualities or the coercive assignment of unwilling incumbent judges.<sup>3</sup>

Quite apart from the problem of encouraging existing judges to limit themselves to this special class of litigation for extended periods, which inheres in the mere creation of a separate Family Division, if that division were to assume exclusive jurisdiction over domestic violence and juvenile cases and provide more expeditious service in all cases, there would be a need for more judges, support personnel, and physical facilities.

(b) Exclusive Jurisdiction Over Domestic  
Violence Cases

The vesting of exclusive jurisdiction over domestic violence cases in the circuit courts would create an immediate need for additional judges, support personnel, and space. Although there is presently concurrent jurisdiction between the circuit and district courts in domestic violence cases, the great majority of initial filings are in the District Court. In the period July 1, 1992 to June 30, 1993 there were over 9,000 domestic violence filings in the District Court, of which nearly 7,700 were in the five metropolitan jurisdictions. Because its dockets consist of a large number of relatively brief proceedings, there is far more flexibil-

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<sup>3</sup> When faced with the reluctance of judges to accept assignment to a Family Division, some people have expressed dismay, criticizing the judges for refusing to recognize the importance of domestic and juvenile cases. It is true, of course, that a Circuit Court judge is expected to handle whatever comes before the Circuit Court and should not be permitted, absent some special reason, to avoid any type or category of case. The judges are not permitted to do that now. That is not the issue here, however. By accepting assignment to a Family Division, the judge is indeed restricting his or her judicial practice for the duration of the assignment and it is that which most judges appear unwilling to do.

ity in that court to handle these filings. It appears that *ex parte* emergency proceedings are scheduled the same day so that immediate temporary relief can be afforded. Although some may deem it preferable to have all these cases heard solely in the Circuit Courts, the evidence seems clear that the metropolitan Circuit Courts could not handle on any basis, and certainly could not provide that kind of immediate service, without an increase in both judicial and non-judicial resources. Cases in the circuit courts are more protracted and are often tried before juries; cutting and splicing dockets is not so easy. Absent an increase in judicial and clerical personnel, placement of exclusive jurisdiction over domestic violence cases in a Family Division of the Circuit Court would likely be counterproductive; it would decrease, rather than increase, efficiency and responsiveness.

Using the accepted standard ratio of one judge/1500 filings, it would appear that the movement of 7,700 domestic violence cases from the District Court to the circuit courts would create an immediate need for at least four additional circuit court judges, as follows: two in Baltimore City (2,724 projected additional cases), one in Baltimore County (1,382 projected additional cases) and one in Prince George's County (2,172 projected additional cases). The circuit courts in Anne Arundel and Montgomery Counties would experience an increase of 616 and 761 cases, respectively. Because the Legislature did not increase the number of District Court judges when it enacted the domestic violence law and because the workload of that court, even without the 9,000 total domestic violence cases, fully justifies the current complement of judges, the need for additional circuit court judges cannot legally or



feasibly be met simply by transferring District Court judges or judgeships to the circuit courts. The total salary and benefit package cost for a circuit court judge is currently \$146,951. The direct cost to the State for four additional judges needed to handle the transfer of domestic violence jurisdiction would therefore be \$587,804.

For each circuit court judge, an additional law clerk, secretary, and courtroom clerk are required, and, in Baltimore and Prince George's Counties, an additional court reporter would also be necessary. In Baltimore City, that would require six additional staff positions, at an estimated local cost of \$117,248 (for the secretaries and law clerks) and an estimated State cost of \$61,608 (for the courtroom clerks). In Baltimore County, the additional local and State costs would be \$101,712 and \$30,804, respectively; in Prince George's County, the comparable costs would be \$97,418 and \$30,804.

It is estimated that, to vest exclusive jurisdiction over domestic violence cases in the circuit courts, would require additional annual State expenditures of \$711,020 and additional annual local expenditures of \$316,378, assuming no increase in staffing in Anne Arundel and Montgomery Counties. In addition, there would be a one-time initial State cost of \$12,000 for equipment and a one-time initial local cost of \$1,855,000 for equipment and space. See Appendix D.

(c) Juvenile Cases

With respect to juvenile cases, there are three major issues. The first is that in Montgomery County the juvenile court is part of the District Court. In FY 1992, there were over 11,000 juvenile



hearings in that court. Obviously, the Circuit Court would have to be enlarged in order to handle that additional caseload. Historically, two judges have been assigned exclusively to handle juvenile cases in the District Court, although a third judge has been requested for that purpose beginning in FY 1995. Although the standard ratio of one judge/1500 cases would indicate a need for seven judges at the circuit court level, based on 11,000 cases, it might be possible if the full support structure existing in the District Court were transferred to the circuit court, to handle the reallocated jurisdiction with only three additional circuit court judges. The cost of three additional circuit court judgeships, including the cost of law clerks, secretaries, and courtroom clerks, would be \$533,265 in State costs and \$190,014 in local costs.<sup>4</sup> There would, in addition, be a one-time initial State cost of \$9,000 for equipment and a one-time initial local cost of \$1,259,250 for equipment and space. See Appendix E. In Baltimore City and Anne Arundel, Baltimore, and Prince George's Counties, masters handle a significant number of these cases. Although HB 425 permits a continuation of masters, the question is raised whether the kind of coordinated service that seems to be a *raison d'etre* of a Family Division could be achieved if a majority of the juvenile cases will be heard and decided by masters.

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<sup>4</sup> Conceptually, some part of that cost could be avoided by transferring three District Court judgeships to the circuit court, although that would not be easy to accomplish. It would require persuading two current District Court judges to apply for the circuit court positions, having the Governor appoint them, and then, by statute, reducing the number of District Court judges in Montgomery County.

Finally, in any of the Circuit Courts, consolidation of juvenile cases in a Family Division may overburden the docket of that division for scheduling purposes. In Baltimore City, nearly 14,000 juvenile cases were filed in FY 1992; in Anne Arundel County, there were 3,635; in Baltimore County 3,448, and in Prince George's County 4,620. Those cases, if handled in a comprehensive Family Division, would compete with the other kinds of cases in that division. The court would have to determine whether to maintain separate dockets for the juvenile cases or to put them in a general Family Division assignment system.

(d) Improved Case Management

The Review Committee recognized that the mere reassignment of family cases to a Family Division would be of little benefit unless with that reassignment goes a more rational and efficient case management system. If, for example, contested custody cases will continue to be referred to masters subject to judicial review on exceptions, very little, if any, efficiency over the present system will be achieved with respect to those cases. A new structure, properly staffed and supported, might produce some benefits on its own, but any significant improvement must come not just from the structure but from the manner in which the Division will actually handle the cases assigned to it. The real focus, then, must be on case management.

In Part IV of this Report, proposals already under consideration and, to some extent, already adopted in one or more circuits, are set forth. The implementation of those proposals would require a realignment in the duties currently performed by masters. Hopefully, with the other techniques and procedures described in

Part IV, that will result in more domestic cases being resolved by agreement earlier in the litigation process, and thus will result, overall, in less cost to the judicial system. It is likely, however, to cause more cases, or parts of cases, to be tried by judges rather than by masters. That alone will result in a need for additional judges -- not because there are more cases, but because it is a better and more efficient way to handle the cases that exist.

It is very difficult to estimate, in advance, how many new judgeships would be needed to achieve this desired result. In part, it is a function of how many present judges would be willing to accept, voluntarily, an extended assignment to a Family Division. Predictions vary as to that. In Baltimore City, three judges are currently assigned to the domestic docket and two more are assigned to juvenile court, but, as noted in Part II of this Report, the perception is that neither of those dockets are being handled with the desired attention and expedition. In Anne Arundel County, one judge devotes most of his time to domestic cases. In Baltimore, Montgomery, and Prince George's Counties, there appears to be a considerable reluctance, as noted earlier in this Report, to accept a long-term restrictive assignment.

As a practical matter, it seems certain that the proper judicial staffing of a Family Division in accordance with the principles set forth in HB 425 will require additional judges and attendant staff, over and above the seven additional judges needed to deal with transferred domestic violence and juvenile cases. As Judge Cawood pointed out to the Review Committee, there would need to be at least one judge in each jurisdiction assigned primarily to

administer the Division, subject to the direction of the County Administrative Judge, and while that division administrative judge may have some time to hear cases, it is likely that, especially with significantly increased "hands-on" management, most of his or her time would need to be devoted to administrative matters. That alone would suggest a need for five additional judges. Given the undisputed reluctance of judges to limit their judicial experience for significant periods of time, it would be difficult to imagine that the improved coordination and expedition sought from a Family Division could be achieved without at least one additional judge, who would be so willing, in each of the five circuits. To the extent that would relieve present judges from dealing with some cases they now handle, the fact is that they would not then become idle. The 1991-92 Annual Report of the Maryland Judiciary indicates that the five metropolitan circuits ended FY 1992 with nearly 29,000 more cases pending than they had at the end of FY 1991. See Table CC-6, p. 45.

Granting that firm fiscal estimates in this area are not possible, after consideration of all of the viewpoints expressed by the members of the Review Committee, it must be conservatively estimated that creation of a Family Division as envisioned by HB 425 will require a *minimum* of seventeen additional circuit court judges -- four to accommodate the shift of domestic violence cases, three to account for the transfer of juvenile jurisdiction, and ten to achieve the improvement in case management. The direct State costs for those additional judgeships would be \$2,498,167. The additional State and local costs for the support staff of those judges (secretaries, law clerks, courtroom clerks, and court

reporters) would be \$766,918 and \$1,574,360, respectively. See Appendix C.

## 2. Space

Judges, clerks, reporters, and other judicial support staff necessarily are located in the circuit court. The addition of new personnel would therefore require the obtention of additional courtrooms, chambers, and offices. AOC has estimated a total need for 53,790 square feet of additional space within the five metropolitan Circuit Courts and, using the standard cost projection utilized by the Department of General Services of \$125 per square foot, has projected a one-time local cost of \$7,153,750. See Appendix C.

## 3. Additional Services

The Committee's Subcommittee on Services, chaired by Judge Cawood, made the point in its report to the Review Committee that "[w]ithout meaningful services, a Family Court or Family Division has little purpose," and therefore that "it is essential not only to have judges dedicated to family law, but to provide those services unique to the family." That subcommittee identified the kinds of services that needed to be provided and then categorized them, for purposes of phase-in, into "Essential Services" required immediately, and "Important but Non-Essential Services," which a Family Division "should develop as resources permit." Into the category of "Essential Services" would fall

- (1) mediation in custody and visitation matters,
- (2) custody investigation,
- (3) the ability to respond immediately to emergencies -- i.e., "trained social workers ... available for judges and masters

... [to] interview the parties, check out information and make recommendations whether the matter is an emergency and if so how it should be handled,"

(4) mental health services -- "psychologists or psychiatrists available in appropriate cases to provide mental health evaluations,"

(5) information services to provide procedural assistance to *pro se* litigants, and

(6) parenting seminars.

Among the "Important but Non-Essential Services," the subcommittee listed follow-up contact with parents following the resolution of custody or visitation disputes, a general mediation program, and a "case manager" for "each family coming into the Family Division system."

Mediation in custody and visitation disputes is already required by Md. Rule S73A, and each of the metropolitan Circuit Courts already has a custody investigation unit. The deficiency with respect to mediation is in its implementation. The Subcommittee on Structure, Jurisdiction, and Case Management concurred with the Subcommittee on Services' recommendation that mediation, information services and parenting seminars be available, but went further in recommending as part of a far more extensive system of judicial control, a wider range of alternative dispute resolution services, including neutral case evaluation, the use of neutral or court-appointed experts, and the arbitration of economic issues.

It is difficult to estimate the costs of these kinds of services, for much depends on (1) how much of each kind of service

is to be provided, and (2) whether and to what extent the service is to be provided by publicly funded personnel employed by the court, outside volunteers solicited, trained, and monitored by the court, or other private personnel to be paid by the parties. The use of court-employed personnel, of course, increases the public cost of the operation significantly, but reliance on private professionals on a fee-for-service basis can make the cost of the proceeding prohibitive for some parties. Some jurisdictions, such as the District of Columbia, have relied on volunteers who are actively recruited, trained, and monitored by court personnel and are paid a modest stipend per case, but that, too, involves a significant cost to the court in constant recruitment, training, monitoring, scheduling, and making space and other necessary facilities and equipment available.

The Administrative Office of the Courts has estimated additional costs for mediation, parenting assistance, forms, psychological and investigative services, and automation, of \$1,533,275, as shown in Appendix C.

#### C. Summary and Conclusion

Recognizing the many uncertainties in terms of how the various services would be provided and, indeed, how a Family Division would actually operate, it appears that the creation of a Family Division of the type envisioned by HB 425, in the five metropolitan courts in Baltimore City and Anne Arundel, Baltimore, Montgomery, and Prince George's Counties, properly staffed and supported, would entail an additional annual State cost of \$3,498,360, an additional annual local cost of \$2,874,360, a one-time initial State cost of \$66,000 for equipment, and a one-time initial local cost of

\$7,294,750 for equipment and space. See Appendix C. Unless the General Assembly (and, to the extent of the local costs, the affected subdivisions) are willing to commit the funds to defray these costs, a Family Division within the five metropolitan Circuit Courts, of the type envisioned in HB 425, is not presently feasible and would provide little benefit. Such a division is not feasible for other reasons in the 16 Circuit Courts with fewer than four judges. Feasibility in the three courts with four judges is marginal at best and would, in any case, depend on the same factors noted with respect to the metropolitan courts.

The Review Committee's conclusion that the underlying legislative objectives cannot presently be achieved simply through the creation of Family Divisions, absent an increase in judicial and non-judicial resources, does not rest entirely upon the concerns noted above. As we observed, the feasibility of establishing a Family Division must be viewed not as an absolute but in relative terms. In the Committee's view, there are mechanisms that can provide some relief at a lower cost.

#### IV. Alternatives To A Model Family Division

##### A. Differentiated Case Management: Judicial Control Over Case Management

There is currently pending before the Court of Appeals, in the 124th Report of the Rules Committee, a proposal for the creation of a differentiated case management system in the Circuit Courts and for greater and more detailed court control over case management. There has been no significant opposition to that aspect of the



Rules Committee proposal, and indeed most of the metropolitan Circuit Courts have already inaugurated or are well along in the planning of such a system. It had always been anticipated by the Rules Committee that, as part of such a system, domestic and family-law cases would be put on one or more special litigation tracks calling for early and periodic court involvement. The goal of that involvement would be to pay special attention to child-related issues, to refer those and other parts of cases to alternative dispute resolution mechanisms wherever appropriate, to streamline the processing of the cases by avoiding duplicative and unnecessary proceedings and, in general, to assure fairness and efficiency.

One important aspect of such a system would be a shifting of the responsibilities of masters in those Circuit Courts that use or would like to use them. Masters would no longer hear contested custody or visitation issues, even *pendente lite*, nor would they hear any contested cases on the merits, except that specific issues regarding the ownership and valuation of property may be referred to a master. Their duties in domestic cases would basically be to hear uncontested matters and a defined range of *pendente lite* support issues and to act as screeners — "traffic cops" — in the processing of cases. Worthy of consideration, however, as suggested by the Subcommittee on Services and Human Resources, is to permit "the parties to waive in advance the exception process, accept the decision of the master as a *nisi pruis* decision, but not waive rights of appeal."

The Committee envisions a program in each circuit court that, for domestic cases, would embody these features:

(1) With their complaint and answer, the parties in a domestic case would file a court-designed information sheet giving some basic information about the parties and the case, including whether child custody or visitation is in dispute, what efforts have been made to resolve that and other issues, and whether any other related cases are pending in any court. They would also exchange basic financial information at that time.

(2) Within 30 days after the case is at issue, the court would develop a case management plan. Among other things, that plan, to be implemented through a scheduling order, might include a scheduling conference before a master or a judge and would include:

(a) If there are related cases pending, consideration to consolidating those cases to avoid multiple litigation;

(b) If there are minor children and the dispute appears to be a contentious one, a determination whether reference to a parenting seminar would be helpful and, if so, requiring attendance at such a seminar;

(c) If custody or visitation is an issue, a determination whether there is any reason not to refer the issue to mediation. Unless mediation is specifically contra-indicated, that issue would be referred to mediation (either in-house, if that resource is available, or through (1) a recruited, trained, and monitored corps of outside mediators or (2) a mediator privately selected by the parties), to commence within 30 days. If mediation is not indicated or is tried and fails, the custody/visitation issue would be separated and tried on the merits by a judge (or, upon agreement of the parties, by a master) within 90 days thereafter. The court would also decide as part of that proceeding, on a *pendente lite*

basis, child and spousal support and use and possession of the family home, if they are in dispute.

(d) With respect to other issues, prompt scheduling of any necessary *pendente lite* proceedings, implementation of a discovery plan setting a deadline for designation of experts, scope limits on discovery, a deadline for completion of discovery, referral of particular issues or all issues to ADR (arbitration, neutral case evaluation, or mediation) and, if appropriate, appointment by the court of a neutral expert. Courts should be encouraged to appoint neutral experts in appropriate cases.

Consideration should be given, subject to any Constitutional impediments, to having *pendente lite* support orders entered by the master immediately effective and not subject to further review for 120 days. If trial on the merits can be held within that period, the exceptions process can be eliminated. If, in a more complex case, trial cannot be so quickly scheduled, review by the court may need to be available if requested.

(3) If the case is not resolved amicably, a final settlement conference to be held shortly before trial. In preparation for that conference, counsel would be required to exchange proposed exhibits, resolve any authentication objections to exhibits, and attempt to stipulate or agree to an offer of testimony when the testimony would be cumulative or undisputed or where the credibility of the witness is not in substantial dispute.

(4) Unless otherwise ordered by the court for cause, trial on the merits on all remaining (non-child) issues would be scheduled within 180 days after resolution of the child-related issues (or

180 days after the screening/scheduling conference if there are no child-related issues).

Separate litigation tracks or sub-tracks can also be established for adoption and termination of parental rights cases designed to assure that all of the necessary consents or other preconditions have been satisfied and to move those cases to trial expeditiously. Special tracks can also be created for miscellaneous paternity, non-support, and contempt cases.

Where appropriate, consideration should be given to assigning to the judge who has heard a CINA case a subsequent proceeding for termination of parental rights, at least when based on that CINA finding.

The thrust of this alternative procedure is to ensure that these kinds of cases do not get lost in the system and are not allowed to languish because of judicial or attorney inertia. It would require each case to be individually examined and dealt with in accordance with its needs, and it would make appropriate resort to ADR more of a reality on a systemic basis.

The estimated annual cost to implement this proposal, which does not envision the transfer of any additional jurisdiction to the circuit courts, is \$476,525 (State) and \$1,543,250 (local). There would also be a one-time initial State cost of \$15,000 for equipment and a one-time initial local cost of \$165,000 for equipment and space. See Appendix H.

#### B. Judicial Training

The Committee has already noted the problem of judges sitting on family and domestic cases who do not wish to do so or who are inexperienced or temperamentally unsuited for those kinds of cases.

One solution, inherent in the notion of a Family Division, is to pre-select judges who are specially suited for these kinds of cases and to allow only them to hear such cases. That, as the Committee has indicated, can not only cause an inadequacy of judicial resources for family and domestic cases but can impede the efficient handling of other cases.

An alternative is to develop through the Judicial Institute a comprehensive training program for all judges, to make them more aware of the special needs of the litigants and the kinds of problems that these cases often present. Indeed, such a program has been developed and will be implemented. A draft proposal for such a program is attached as Appendix I. The program would encompass not only a grounding in the relevant law but also the psychological factors that bear upon the parties and their children. Coupled with a case management system designed to reduce the number of cases actually proceeding to trial and to narrow the issues requiring judicial resolution, a proper training program can help to make judges more comfortable with these cases, more sensitive to their needs, and more willing to hear them. The Committee recommends the development of such a training program and, over time, attendance at it by all Circuit Court judges.

C. Special Consideration for Unrepresented Persons

Finally, the Committee recommends the creation within each Circuit Court of a unit (which in a small jurisdiction may be one person) to assist unrepresented persons in understanding the process and obtaining counsel. At least one person in the clerk's office, specially trained with the assistance of the local or State

bar association, and, in the busier jurisdictions, a master should be designated and available to help these people by explaining the process and assisting them in making contact with lawyer referral services, Legal Aid, or other *pro bono* organizations. Although neither the clerk nor a master should attempt to give legal advice, they can help to guide unrepresented persons through the system, give them any pre-approved forms they might need or find useful, and assist in other ways, such as scheduling *pendente lite* hearings.

#### V. Unified Forms

The Subcommittee on Forms was charged with studying the need for unified forms for use in domestic and family related cases, both for legally represented litigants as well as *pro se* litigants. The Subcommittee worked with the Family and Domestic Subcommittee of the Rules Committee of the Court of Appeals and the Attorney General's Ad Hoc Committee on Forms for *pro se* litigants. The Subcommittee recommended that the Rules Committee:

(1) "consider, as expeditiously as possible, extant forms in the domestic and family law areas, including those developed by the Advisory Council on Family Legal Needs of Low Income Persons, the Attorney General's ad hoc committee on forms, those being developed in response to the recommendations of the Maryland Judicial

Conference Committee on Child Support Enforcement, and those made available by interested practitioners.

(2) "work with the Attorney General's office, various bar associations, and interested persons to develop appropriate forms in domestic and family law areas such as adoption, alimony, annulment and divorce for which forms do not exist."

The Subcommittee on Forms also recommended that the Committee on Family Divisions in the Circuit Courts "ask the Court of Appeals of Maryland to consider and adopt, as expeditiously as possible, forms recommended by the Standing Committee on Rules of Practice and Procedure, and when adopted, have the forms printed and distributed to all circuit courts to be made available to the public."

## VI. Conclusion

The Committee believes that if the General Assembly and the local governments find it impracticable to provide the minimally necessary funds to make a full Family Division feasible, the alternatives suggested above can go far toward meeting the legislative objective and resolving the more specific deficiencies identified by the Committee. Consideration should be given to implementing other features commonly found in Family Division models, such as assigning judges to family law cases who are trained, capable, and willing to hear them, developing automated case tracking systems, and providing centralized facilities so that the various court components and services applicable to these cases are within close proximity to one another.

## APPENDIX A

### Members and Consultants of the Family Review Committee

#### Chair

Judge Robert C. Murphy, Chief Judge, Court of Appeals of Maryland

#### Members

Judge James C. Cawood, Jr., Associate Judge of the Circuit Court for Anne Arundel County and Co-chair of the Alternate Dispute Resolution Committee of the Maryland State Bar Association

Judge Andre M. Davis, Associate Judge of the Circuit Court for Baltimore City and Chair of the Executive Committee of the Maryland Judicial Conference

Judge John F. Fader, II, Associate Judge of the Circuit Court for Baltimore County and Chair of the Judicial Administration Section of the Maryland State Bar Association

Judge Barbara Kerr Howe, Associate Judge of the Circuit Court for Baltimore County and County Administrative Judge of that jurisdiction

Ms. Vivian Jenkins, Clerk of the Circuit Court for Prince George's County

Judge Joseph H. H. Kaplan, Associate Judge of the Circuit Court for Baltimore City and Circuit Administrative Judge for the Eighth Judicial Circuit

Judge Robert H. Mason, Associate Judge of the Circuit Court for Prince George's County and Former Presiding Member of the Family court Pilot Experiment in the Circuit Court for Prince George's County

Judge Peter J. Messitte, Former Associate Judge of the Circuit Court for Montgomery County and Former chair of the Committee on Family and Domestic Relations Law of the Maryland Judicial Conference

Judge David B. Mitchell, Associate Judge of the Circuit Court for Baltimore City and Judge-In-Charge of the Juvenile Court in that jurisdiction

Roger A. Perkins, Esq., Private Practitioner in Anne Arundel County and Immediate Past President of the Maryland State Bar Association



Judge Mary Ellen T. Rinehardt, Administrative Judge of the District Court of Maryland sitting in Baltimore City and Chair of Ad Hoc Committee on Domestic Violence

Sheila K. Sachs, Esq., Private Practitioner in Baltimore City and Chair of the Family Law Section of the Maryland State Bar Association

Judge Alfred T. Truitt, Jr., Associate Judge of the Circuit Court for Wicomico County; Circuit Administrative Judge of the 1st Judicial Circuit, and Chair of the Conference of Circuit Court Judges

Judge William P. Turner, Associate Judge of the Circuit Court for Montgomery County and a Former Master in that County Circuit Court

Judge Alan M. Wilner, Chief Judge of the Court of Special Appeals and Chair of the Standing Committee of the Court of Appeals on Rules of Practice and Procedure

Judge Frederick C. Wright, III, Associate Judge of the Circuit Court for Washington County and County Administrative Judge for the Fourth Judicial Circuit

#### Consultants

Professor Barbara A. Babb, University of Baltimore School of Law

Judge Rosalyn B. Bell, Retired Judge, Court of Special Appeals

J. Joseph Curran, Jr., Attorney General of Maryland and Chair of the Advisory Council on Family Legal Needs of Low Income Persons

Judge Kathleen O'Ferrall Friedman, Associate Judge of the Circuit Court for Baltimore City and Chair of the Maryland Judicial Conference Committee on Child Support Enforcement

Honorable Kenneth C. Montague, Jr., Member of the House of Delegates of Maryland and Member of the House Judiciary Committee

Professor Jane C. Murphy, University of Baltimore School of Law

Judge (Ret.) Robert B. Watts, Former Associate Judge of the Circuit Court for Baltimore City and Chair of the Governor's Task Force on Family Law.

## Appendix B

**MEMORANDUM TO:** Hon. Robert C. Murphy, Chief Judge  
**FROM:** Elizabeth Buckler Veronis  
**SUBJECT:** Final Update on Priority in Scheduling Cases  
**DATE:** August 18, 1993

The following list replaces all of the former lists sent to you as to priority in scheduling cases. This list is based on additional computer searches, incorporating 1993 legislation. The sections entitled "priority" and "a.s.a.p." should be accurate. With respect to the part called "specific time limits", I could not formulate a computer search and, therefore, there are probably gaps.

### STATUTORY REQUIREMENTS ON SCHEDULING OF CASES

#### **PRIORITY**

Art. 24, § 9-707(a): action to recover unpaid hotel tax "shall be tried as soon as the action is at issue and shall take precedence over all other civil cases."

Art. 66B, § 4.08(d): issue in connection with local zoning "shall have preference over all other civil actions and proceedings."

Art. 70B, § 31(e): State's action to recover on default of grant for senior citizen activity centers "shall have priority over other civil proceedings in the circuit courts."

Art. 78, § 93(b): proceedings under or involving questions about the public service article "shall be preferred over all other civil causes except election causes in all the [trial] courts of this State, irrespective of their position on the dockets; and the courts shall always be open for the trial of such proceedings"<sup>[1]</sup>.

Art. 83C, § 4-106(d)(1): State's action to recover on default of loan for juvenile programs "shall have priority over other civil proceedings in the circuit courts."

CJ § 3-2A-06(b)(3): trial on rejection of a health claim arbitration panel's determination "shall have precedence over all cases except criminal matters and workers' compensation appeals."

EN § 7-412(b)<sup>[2]</sup>: appeal in connection with hazardous waste facility siting "has preference over other civil actions and proceedings in both trial and appellate courts."

EN § 9-263: appeals from orders or regulations of the Secretary of the Environment in connection with water and sewage "shall have precedence over any civil cause of a different nature, except appeals from an order of the Public Service Commission" and a court "shall always be deemed open for trial of an action under this section ... ." <sup>(3)</sup>

HG § 5-612(c) <sup>(4)</sup>: "[e]xcept for cases that the court considers of greater importance," proceedings on a petition on life-sustaining procedures "including an appeal, shall: (1) take precedence on the docket; (2) be heard at the earliest practicable date; and (3) be expedited in every way."

HG § 24-606(d)(1) <sup>(5)</sup>: State's action to recover on default of loans for mental health facilities "shall have priority over other civil proceedings in the circuit courts".

HG § 24-706(d)(1): State's action to recover on default of loans for adult day care facilities "shall have priority over other civil proceedings in the circuit courts".

LE § 8-512(e)(1): an appeal or certified question of law in connection with unemployment insurance shall be given "priority ... over all other civil cases except cases under the Workers' Compensation Law of the State."

LE § 8-630(b): an action to collect an unemployment insurance assessment from an employing unit "(1) shall be heard ... at the earliest possible date... and (2) except for petitions for judicial review under this title and cases arising under the workers' compensation law of the State, shall be entitled to preference on the calendar of the court over all other civil actions."

LE § 9-740: an appeal from the Workers' Compensation Commission "has precedence over all other cases except criminal cases".

NR § 6-509(c): "[i]n order to expedite judicial review, any court of the State, either at the trial or appellate level, which acquires jurisdiction over any legal challenge to the Secretary's action on any application [for coastal facilities] shall give highest priority to such proceeding in the scheduling of appropriate hearings and trials and in the respective court's deliberation."

TG § 13-818(a): an action for unpaid taxes "shall be tried as soon as the action is at issue and shall take precedence over all other civil cases", if the plaintiff<sup>[6]</sup> so requests.

TP § 14-869(a): an action for unpaid taxes "shall be brought to trial as soon as the case is at issue, and shall take precedence over all other civil cases", if the plaintiff<sup>[7]</sup> so requests.

TR § 5-615(e): appeal in connection with airport zoning "has preference over all other civil actions and proceedings."

Additionally, the United States Commission on Child Support Enforcement evidently has recommended that cases involving parentage be given priority over other civil cases. *Report and Recommendations of the United States Commission on Interstate Child Support*, "Court Management Practices."<sup>[8]</sup>

#### **SPECIFIC TIME LIMITS**

Art. 24, § 4-212(a)(2): Circuit Court to hear a petition under the St. Mary's County Open Meetings Act within 7 days.

Art. 27, § 297(h)(6)(i): court to set hearing on forfeiture claim "within 60 days after the later of posting or final publication of the notice ... if an answer has been timely filed".

Art. 27, § 591: speedy trial provisions for criminal cases.

Art. 48A, § 242B(2): Circuit Court of Baltimore City to hear an appeal from a decision of the Insurance Commissioner as to rates or ratings within 60 days after the notice of appeal is filed.

Art. 48A, § 361B(a)<sup>[9]</sup>: Circuit Court of Baltimore City to hear an appeal from a decision of the Insurance Commissioner as to forms and rates of a nonprofit health service plan in accordance with § 242B.

CJ § 3-815(d)(2): hearing on petition for detention or shelter care "shall be held not later than the next court day, unless extended by the court upon good cause shown."

ET § 13-709(c)(5) and (j)<sup>[10]</sup>: a petition for appointment of a guardian of the person of a disabled person is to be heard "on an expedited basis no more than 60 days after the filing of the petition" and appellate review is to be "on an expedited basis".

FL § 4-506(b)(2): a protective order hearing on domestic violence "shall be held no later than 7 days after the temporary ex parte order is served on the respondent."

FL § 10-131(d): hearing on motion to stay an earnings withholding order to be scheduled within 15 days.

(i): ruling on request for service of the order to be made within 45 days.

HG § 12-120(b)(1), (e), and (i): court to give notice of alleged violation of conditional release "promptly" ; to issue hospital

warrant "promptly" on determination of probable cause to believe committed individual violated conditional release; and, within 10 days after receiving a report from a hearing officer, to act on the petition for revocation or modification.

RP § 8-402(b)(2): hearing in an appeal in an action for holding over shall be set "not less than five nor more than 15 days after the application [for the hearing]" by a party.

RP § 8-402.1(b): hearing in an appeal in a breach of lease action shall be set "not less than five nor more than 15 days after the application [for the hearing]" by a party.

RP § 8A-1702(b)(2): hearing in an appeal in an action for holding over under a mobile home lease shall be set "not less than 5 nor more than 15 days after the application [for the hearing]" by a party.

RP § 8A-1703(b): hearing in an appeal in connection with breach of rental agreement of a mobile home shall be set "not less than 5 nor more than 15 days after the application [for the hearing]" by a party.

**A.S.A.P.**



Art. 27, § 413(k)(5) and (8): sentencing hearing on life without parole to be held "as soon as practicable after the trial has been completed".<sup>[1]</sup>

Art. 27, § 596: arrestee to be taken "without unnecessary delay" before a judge for a hearing on the lawfulness of an arrest by law enforcement officer of another state.

Art. 29, § 2-103(c)(4): condemnation hearing instituted by WSSC after emergency taking to be heard "as soon as practicable after the application to the court."

Art. 33, § 17-7(b): circuit court to "determine the time for the speedy hearing [on alleged error of board of canvasser], in its discretion", with an appeal to the Court of Special Appeals to be taken within 5 days after the decision and heard "as soon after the transmission of the record as possible."

Art. 33, § 27-10(d): an appeal from an election board as to registration, voting, or validity of a ballot "shall be heard ... as soon as possible."

Art. 48A, § 243H(b)(3)(iii): notice to state that MAIF may "request the court to set the action for an expedited hearing."

Art. 89, § 88(d): an appeal from an order of Commissioner of Labor and Industry in connection with equipment impoundment "shall be heard expeditiously".

Art. 89, § 92(e): an appeal from an order of Commissioner of Labor and Industry in connection with railroad safety "shall be heard expeditiously".

BR § 3-206(c): an appeal from an order or regulation of the Commissioner of Labor and Industry in connection with an amusement attraction shall be heard "promptly".

BR § 3-207(c): an action by the Commissioner of Labor and Industry in connection with an amusement attraction shall be heard "promptly".

CJ §§ 3-207(b) and 3-208(c): a court "shall proceed expeditiously" to determine whether an arbitration agreement exists and "[i]f ... existence of the arbitration agreement is in substantial and bona fide dispute, it shall try this issue promptly ... ."

CJ § 3-812(h): the hearing and ruling on petition for emergency medical treatment of a child to be "on an expedited basis."

CJ § 3-813(d): court to review juvenile master's recommendations and proposals "promptly".

CJ § 3-820(j)(1): court to review semiannual reports of the Department of Health and Mental Hygiene on a committed child "promptly".

CJ § 3-2B-06(b)(1): a hearing on a motion to vacate or modify an order of an international commercial arbitral tribunal for security or countersecurity "shall be held promptly."

ED § 8-306(f)(2): an appeal or review in connection with admission of a child to the Maryland School for the Blind "shall be decided as soon as practicable".

ED § 8-415(f): a review of the placement of a disabled child shall be heard and decided "as soon as practicable after receiving the record of the case."

ET § 13-705(f): the hearing and ruling on petition for emergency medical treatment of a disabled person to be "on an expedited basis."

FL § 9-223: jurisdictional issues under the Uniform Child Custody Jurisdiction Act "shall be given calendar priority and handled expeditiously."

HG § 12-103(b): trial to begin "as soon as practicable" after finding defendant competent.

LE § 5-215(e): an appeal from an order or regulation of the Commissioner of Labor and Industry in connection with occupational safety and health shall be heard "expeditiously".

NR § 5-208(b): "following a prompt hearing", court empowered to enjoin adverse changes to property being condemned by the Department of Natural Resources and "until a prompt hearing can be held", to issue an *ex parte* injunction

RP § 8-332(b): an appeal in an action of distress "shall be set for trial as soon as possible", on application of a party.

SG § 10-623(c)(1): "[e]xcept for cases that the court considers of greater importance", an appeal from a denial of access to a public record shall "take precedence on the docket", shall "be heard at the earliest practicable date", and shall "be expedited in every way".

Effective June 1, 1993, Chapter 59, Acts of 1993, repealed Art. 48A, § 40(4), which provided for certain appeals from Insurance Commissioner to be heard "as soon as reasonably possible" after receipt of the transcript and evidence. Accordingly, appeals under Art. 48A, § 234AA(e)(2), as to discrimination in surety insurance, Art. 48A, § 240AA(h), as to vehicle insurance, Art. 48A, § 361B(b)<sup>[12]</sup>, as to nonprofit health service plan, other than forms and rates, Art. 48B, § 6, as to motor clubs, CA § 6-420, as to fraternal benefit societies, and HG § 19-733, as to health maintenance organizations, are no longer subject to that constraint either.

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[1] With respect to the exception for "election causes", Art. 33, § 19-4(1) and (3)(ii) requires proceedings challenging an election "shall be heard ... as expeditiously as the circumstances require" and subsequently appealed directly to the Court of Appeals, where the appeal "shall be given priority and shall be heard and decided as expeditiously as the circumstances require". See also Art. 33, § 17-7(b), noted above and § 27-10(d), noted above, and the similar provisions for appellate review by the Court of Special Appeals in § 27-10(e).

[2] Effective July 1, 1993, Chapter 149, Acts of 1993, renumbered this provision, which previously was NR § 3-712(b).

[3] The revisor's note indicates that the Department contends § 9-263 has been superseded by the APA.

[4] Enacted by Ch. 372, Acts of 1993, effective October 1, 1993.

[5] Chapter 31, Act of 1993, renumbers this provision as HG § 24-606(f)(1), effective October 1, 1993.

[6] The authorized plaintiffs are the State, the Treasurer, or a tax collector. TG § 13-816(b)(2).

[7] The authorized plaintiffs are the State, the Treasurer or other State tax collector, a county or municipal governing body or local tax collector. TG § 14-868.

[8] This recommendation was noted in the Report of the Maryland Judicial Conference's Committee on Child Support Enforcement. I am trying to obtain a copy of the Commission's report.

[9] As amended by Chapter 507, Acts of 1993, effective June 1, 1993.

[10] Ch. 208, Acts of 1993, repealed and reenacted these provisions but did not make any changes.

[11] Specific reference to failure to give notice as to a death penalty is the only difference between paragraphs (5) and (8).

[12] Enacted by Chapter 507, Acts of 1993, effective June 1, 1993.

## Appendix C

### Composite Cost of Family Division in Five Metropolitan Circuit Courts Fiscal Year 1995

Jurisdiction	Judges <sup>1</sup>	Staff <sup>2</sup> (State)	Staff <sup>3</sup> (Local)	Mediation/ <sup>4</sup> Parenting	Forms <sup>5</sup> (State)	Psychological <sup>6</sup> Investigative	Automation <sup>7</sup>	Total (State)	Total (Local)	Equipment (State)	Equipment <sup>8</sup> (Local)	Space <sup>9</sup> (Local)
Anne Arundel Co.	\$293,902	\$110,258	\$231,184	\$50,000	\$27,825	\$60,000	\$150,000	\$431,985	\$491,184	\$9,000	\$21,000	\$847,500
Baltimore City	\$587,804	\$171,866	\$283,146	\$50,000	\$76,328	\$60,000	\$150,000	\$835,998	\$543,146	\$15,000	\$27,000	\$1,820,000
Baltimore Co.	\$440,853	\$141,062	\$353,786	\$50,000	\$34,545	\$60,000	\$150,000	\$616,460	\$613,786	\$12,000	\$30,000	\$1,218,750
Montgomery Co.	\$734,755	\$202,670	\$365,340	\$50,000	\$27,993	\$60,000	\$150,000	\$965,418	\$625,340	\$18,000	\$33,000	\$2,048,750
Prince George's Co.	\$440,853	\$141,062	\$340,904	\$50,000	\$66,584	\$60,000	\$150,000	\$648,499	\$600,904	\$12,000	\$30,000	\$1,218,750
<b>TOTAL</b>	<b>\$2,498,167</b>	<b>\$766,918</b>	<b>\$1,574,360</b>	<b>\$250,000</b>	<b>\$233,275</b>	<b>\$300,000</b>	<b>\$750,000</b>	<b>\$3,498,360</b>	<b>\$2,874,360</b>	<b>\$66,000</b>	<b>\$141,000</b>	<b>\$7,153,750</b>

<sup>1</sup> Costs assume need for additional judgeships given the independent structure of the family division and the exclusivity of family matter jurisdiction.

<sup>2</sup> Staff support includes one courtroom clerk for each additional judgeship which is a state expense.

<sup>3</sup> Staff support includes a law clerk, court reporter, and secretary for each additional judgeship in Anne Arundel, Baltimore, and Prince George's Counties. Due to the implementation of alternative court reporting technologies, Baltimore City and Montgomery County staff support only includes a law clerk and secretary for each additional judgeship. Each jurisdiction also includes one case manager and one ombudsman.

<sup>4</sup> Information on case referrals and costs are generally unavailable in most jurisdictions. A preliminary cost analysis was attempted based on limited information pertaining to mediation services and parenting seminars available from Montgomery County's recently established differentiated case management system. In Montgomery County, litigants presently pay for these services with those parties who cannot afford the fees absorbed into the system at no expense to the court. It is difficult to project the Montgomery data relative to cost and volume onto other jurisdictions without further analysis. A qualitative assessment as to the accommodation of litigants unable to afford the costs of these services was made for the purpose of this report.

<sup>5</sup> Form pleadings have very limited use in the circuit courts. Cost projections were attempted based upon the District Court forms appropriation of \$700,000 for Fiscal Year 1994 and proportional domestic case estimates within the circuit courts.

<sup>6</sup> These cost estimates reflect an increase to the present local budgets based upon a need to expand services. Baseline budget data were obtained from the Circuit Court Personnel and Budget Report, Fiscal Year 1993. An attempt to analyze these data for projection purposes provided little assurance as to the validity or reliability of the projections. A conservative cost increase was applied across the board as a result of a qualitative estimate.

<sup>7</sup> Cost for additional automation is derived from an analysis dated August 19, 1993, conducted by Prince George's County relative to the establishment of a family division within that jurisdiction and subsequently is applied to each jurisdiction. This may represent a rather conservative across-the-board estimate and may need to be applied annually over several years depending upon the level of automation within each jurisdiction.

<sup>8</sup> State and local costs are based on \$3,000 per additional personnel and represent a one-time cost.

<sup>9</sup> Space is calculated as a one-time capital expense to accommodate additional personnel. Space allocations were obtained from Space Management and the Courts, Dept. of Justice and a limited number of interviews. Space is estimated at 53,790 sq. ft. and costs are calculated at \$125 per square foot as utilized by the Dept. of General Services. Calculations of leasing costs as an alternative were not included because of the need to maintain the physical integrity of the division and the Circuit Court.

# Appendix D

## Cost of Transferring Domestic Violence Jurisdiction from District Court Fiscal Year 1995

Jurisdiction	Judges <sup>1</sup>	Judicial Support <sup>2</sup> Staff (State)	Judicial Support <sup>3</sup> Staff (Local)	Total (State)	Total (Local)	Equipment (State)	Equipment <sup>4</sup> (Local)	Space <sup>5</sup> (Local)
Anne Arundel Co.	0	0	0	0	0	0	0	0
Baltimore City	\$293,902	\$61,608	\$117,248	\$355,510	\$117,248	\$6,000	\$12,000	\$932,500 <sup>6</sup>
Baltimore Co.	\$146,951	\$30,804	\$101,712	\$177,755	\$101,712	\$3,000	\$9,000	\$446,250
Montgomery Co.	0	0	0	0	0	0	0	0
Prince George's Co.	\$146,951	\$30,804	\$97,418	\$177,755	\$97,418	\$3,000	\$9,000	\$446,250
<b>TOTAL</b>	<b>\$587,804</b>	<b>\$123,216</b>	<b>\$316,378</b>	<b>\$711,020</b>	<b>\$316,378</b>	<b>\$12,000</b>	<b>\$30,000</b>	<b>\$1,825,000</b>

<sup>1</sup> Additional judgeships based upon caseload projections calculated through a statistical application of linear regression analysis using historical data in an attempt to define trends in future caseload volumes. There exists uncertainty as to the effect of exclusive domestic violence jurisdiction within the circuit courts given the protracted nature of Circuit Court dockets and the inherent hearing and scheduling demands of domestic violence cases.

<sup>2</sup> Staff support includes one courtroom clerk per judge.

<sup>3</sup> Staff support includes a law clerk, court reporter, and secretary for each additional judgeship in Baltimore and Prince George's Counties. Due to the implementation of alternative court reporting technologies, Baltimore City staff support only includes a law clerk and secretary for each additional judgeship.

<sup>4</sup> State and local equipment costs are based on \$3,000 per each additional personnel.

<sup>5</sup> Space is calculated as a one-time capital expense and is estimated at 13,480 sq. ft. and is calculated at \$125 per sq. ft. as utilized by the Department of General Services. Calculations of leasing costs as an alternative were not included because of the need to maintain the physical integrity of the Circuit Court.

<sup>6</sup> Cost estimate includes an additional \$70,000 per each additional courtroom to install videotape court reporting technology.



**Appendix E**

**Cost of Transferring Juvenile Causes from District Court in Montgomery County**  
**Fiscal Year 1995**

Jurisdiction	Judges <sup>1</sup>	Judicial Support Staff (State)	Judicial Support Staff (Local)	Total (State)	Total (Local)	Equipment (State)	Equipment <sup>2</sup> (Local)	Space <sup>3</sup> (Local)
Montgomery Co.	\$440,853	\$92,412	\$190,014	\$533,265	\$190,014	\$9,000	\$18,000	\$1,241,250

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<sup>1</sup> Judgeships based upon the two District Court judges presently assigned to hear juvenile causes and a third as requested in the Judiciary's Certification of Needs for Additional Judgeships for Fiscal Year 1995.

<sup>2</sup> State and local equipment costs are based on \$3,000 per each additional personnel.

<sup>3</sup> Space is calculated as a one-time capital expense and is estimated at 9,210 sq. ft. and is calculated at \$125 per sq. ft. as utilized by the Department of General Services. Calculations of leasing costs as an alternative were not included because of the need to maintain the physical integrity of the Circuit Court. Cost estimate includes an additional \$30,000 per each additional courtroom to install audio court reporting technology.

**Appendix F**

**Cost of Improved Case Management in Family Division  
Fiscal Year 1995**

Jurisdiction	Judges <sup>1</sup>	Judicial <sup>2</sup> Support Staff (State)	Judicial <sup>3</sup> Support Staff (Local)	Total (State)	Total (Local)	Equipment (State)	Equipment <sup>4</sup> (Local)	Space <sup>5</sup> (Local)
Anne Arundel Co.	\$293,902	\$61,608	\$182,534	\$355,510	\$182,534	\$6,000	\$18,000	\$817,500
Baltimore City	\$293,902	\$61,608	\$117,248	\$355,510	\$117,248	\$6,000	\$12,000	\$932,500 <sup>6</sup>
Baltimore Co.	\$293,902	\$61,608	\$203,424	\$355,510	\$203,424	\$6,000	\$18,000	\$817,500
Montgomery Co.	\$293,902	\$61,608	\$126,676	\$355,510	\$126,676	\$6,000	\$12,000	\$493,750 <sup>7</sup>
Prince George's Co.	\$293,902	\$61,608	\$194,836	\$355,510	\$194,836	\$6,000	\$18,000	\$817,500
<b>TOTAL</b>	<b>\$1,469,510</b>	<b>\$308,040</b>	<b>\$824,718</b>	<b>\$1,777,550</b>	<b>\$824,718</b>	<b>\$30,000</b>	<b>\$78,000</b>	<b>\$3,878,750</b>

<sup>1</sup> Assumes an increase of two additional judgeships per each jurisdiction.

<sup>2</sup> Staff support includes one courtroom clerk per judge.

<sup>3</sup> Staff support includes a law clerk, court reporter, and a secretary for each additional judgeships in Anne Arundel, Baltimore, and Prince George's Counties. Due to the implementation of alternative court reporting technologies, Baltimore City and Montgomery County staff support only include a law clerk and secretary for each additional judgeship.

<sup>4</sup> State and local equipment costs are based on \$3,000 per each additional personnel.

<sup>5</sup> Space is calculated as a one-time capital expense to accommodate additional personnel. Space allocations were obtained from Space Management and the Courts, Dept. of Justice and a limited number of interviews. Space is estimated at 29,430 sq. ft. and costs are calculated at \$125 per square foot as utilized by the Dept. of General Services. Calculations of leasing costs as an alternative were not included because of the need to maintain the physical integrity of the division and the Circuit Court.

<sup>6</sup> Cost estimate includes an additional \$70,000 per each additional courtroom to install videotape court reporting technology.

<sup>7</sup> Cost estimate includes an additional \$30,000 per each additional courtroom to install audio court reporting technology.

## Appendix G

### Cost of Additional Services Fiscal Year 1995

Jurisdiction	Ombudsman (State)	Case Manager (Local)	Mediation/ <sup>1</sup> Parenting	Forms <sup>2</sup> (State)	Psychological <sup>3</sup> Investigative	Automation <sup>4</sup>	Total (State)	Total (Local)	Equipment (State)	Equipment (Local)	Space <sup>5</sup> (Local)
Anne Arundel Co.	\$48,650	\$48,650	\$50,000	\$27,825	\$60,000	\$150,000	\$76,475	\$308,650	\$3,000	\$3,000	\$30,000
Baltimore City	\$48,650	\$48,650	\$50,000	\$76,328	\$60,000	\$150,000	\$124,978	\$308,650	\$3,000	\$3,000	\$30,000
Baltimore Co.	\$48,650	\$48,650	\$50,000	\$34,545	\$60,000	\$150,000	\$83,195	\$308,650	\$3,000	\$3,000	\$30,000
Montgomery Co.	\$48,650	\$48,650	\$50,000	\$27,993	\$60,000	\$150,000	\$76,643	\$308,650	\$3,000	\$3,000	\$30,000
Prince George's Co.	\$48,650	\$48,650	\$50,000	\$66,584	\$60,000	\$150,000	\$115,234	\$308,650	\$3,000	\$3,000	\$30,000
<b>TOTAL</b>	<b>\$243,250</b>	<b>\$243,250</b>	<b>\$250,000</b>	<b>\$233,275</b>	<b>\$300,000</b>	<b>\$750,000</b>	<b>\$476,525</b>	<b>\$1,543,250</b>	<b>\$15,000</b>	<b>\$15,000</b>	<b>\$150,000</b>

<sup>1</sup> Information on case referrals and costs are generally unavailable in most jurisdictions. A preliminary cost analysis was attempted based on limited information pertaining to mediation services and parenting seminars available from Montgomery County's recently established differentiated case management system. In Montgomery County, litigants presently pay for these services with those parties who cannot afford the fees absorbed into the system at no expense to the court. It is difficult to project the Montgomery data relative to cost and volume onto other jurisdictions without further analysis. A qualitative assessment as to the accommodation of litigants unable to afford the costs of these services was made for the purpose of this report.

<sup>2</sup> Form pleadings have very limited use in the circuit courts. Cost projections were attempted based upon the District Court forms appropriation of \$700,000 for Fiscal Year 1994 and proportional domestic case estimates within the circuit courts.

<sup>3</sup> These cost estimates reflect an increase to the present local budgets based upon a need to expand services. Baseline budget data were obtained from the Circuit Court Personnel and Budget Report, Fiscal Year 1993. An attempt to analyze these data for projection purposes provided little assurance as to the validity or reliability of the projections. A conservative cost increase was applied across the board as a result of a qualitative estimate.

<sup>4</sup> Cost for additional automation is derived from an analysis dated August 19, 1993, conducted by Prince George's County relative to the establishment of a family division within that jurisdiction and subsequently is applied to each jurisdiction. This may represent a rather conservative across-the-board estimate and may need to be applied annually over several years depending upon the level of automation within each jurisdiction.

<sup>5</sup> Space is calculated as a one-time capital expense to accommodate additional personnel. Space allocations were obtained from Space Management and the Courts, Dept. of Justice and a limited number of interviews. Space is estimated at 1,200 sq. ft. and costs are calculated at \$125 per square foot as utilized by the Dept. of General Services. Calculations of leasing costs as an alternative were not included because of the need to maintain the physical integrity of the division and the Circuit Court.

## *Appendix H*

### Cost of Expedited Differentiated Case Management Fiscal Year 1995

Jurisdiction	Ombudsman (State)	Case Manager (Local)	Mediation/ <sup>1</sup> Parenting	Forms <sup>2</sup> (State)	Psychological <sup>3</sup> Investigative	Automation <sup>4</sup>	Total (State)	Total (Local)	Equipment (State)	Equipment (Local)	Space <sup>5</sup> (Local)
Anne Arundel Co.	\$48,650	\$48,650	\$50,000	\$27,825	\$60,000	\$150,000	\$76,475	\$308,650	\$3,000	\$3,000	\$30,000
Baltimore City	\$48,650	\$48,650	\$50,000	\$76,328	\$60,000	\$150,000	\$124,978	\$308,650	\$3,000	\$3,000	\$30,000
Baltimore Co.	\$48,650	\$48,650	\$50,000	\$34,545	\$60,000	\$150,000	\$83,195	\$308,650	\$3,000	\$3,000	\$30,000
Montgomery Co.	\$48,650	\$48,650	\$50,000	\$27,993	\$60,000	\$150,000	\$76,643	\$308,650	\$3,000	\$3,000	\$30,000
Prince George's Co.	\$48,650	\$48,650	\$50,000	\$66,584	\$60,000	\$150,000	\$115,234	\$308,650	\$3,000	\$3,000	\$30,000
<b>TOTAL</b>	<b>\$243,250</b>	<b>\$243,250</b>	<b>\$250,000</b>	<b>\$233,275</b>	<b>\$300,000</b>	<b>\$750,000</b>	<b>\$476,525</b>	<b>\$1,543,250</b>	<b>\$15,000</b>	<b>\$15,000</b>	<b>\$150,000</b>

<sup>1</sup> Information on case referrals and costs are generally unavailable in most jurisdictions. A preliminary cost analysis was attempted based on limited information pertaining to mediation services and parenting seminars available from Montgomery County's recently established differentiated case management system. In Montgomery County, litigants presently pay for these services with those parties who cannot afford the fees absorbed into the system at no expense to the court. It is difficult to project the Montgomery data relative to cost and volume onto other jurisdictions without further analysis. A qualitative assessment as to the accommodation of litigants unable to afford the costs of these services was made for the purpose of this report.

<sup>2</sup> Form pleadings have very limited use in the circuit courts. Cost projections were attempted based upon the District Court forms appropriation of \$700,000 for Fiscal Year 1994 and proportional domestic case estimates within the circuit courts.

<sup>3</sup> These cost estimates reflect an increase to the present local budgets based upon a need to expand services. Baseline budget data were obtained from the Circuit Court Personnel and Budget Report, Fiscal Year 1993. An attempt to analyze these data for projection purposes provided little assurance as to the validity or reliability of the projections. A conservative cost increase was applied across the board as a result of a qualitative estimate.

<sup>4</sup> Cost for additional automation is derived from an analysis dated August 19, 1993, conducted by Prince George's County relative to the establishment of a family division within that jurisdiction and subsequently is applied to each jurisdiction. This may represent a rather conservative across-the-board estimate and may need to be applied annually over several years depending upon the level of automation within each jurisdiction.

<sup>5</sup> Space is calculated as a one-time capital expense to accommodate additional personnel. Space allocations were obtained from Space Management and the Courts, Dept. of Justice and a limited number of interviews. Space is estimated at 1,200 sq. ft. and costs are calculated at \$125 per square foot as utilized by the Dept. of General Services. Calculations of leasing costs as an alternative were not included because of the need to maintain the physical integrity of the division and the Circuit Court.

**FINAL REPORT OF THE FAMILY LAW CURRICULUM COMMITTEE OF  
THE MARYLAND JUDICIAL INSTITUTE**

**Committee Members:**

**William O. Carr  
John Fader  
Kathleen Friedman  
Barbara Howe  
Steven Platt  
Cypert O. Whitfill**

## FINAL REPORT OF THE FAMILY LAW CURRICULUM COMMITTEE

### INTRODUCTION

In recent times, the Judicial system in Maryland has come under scrutiny for the way in which cases involving divorce, child custody, spousal support and paternity are handled. Among the criticisms that have been made are the amount and type of training that judges who handle these family law cases receive.

It is a fact that the majority of Maryland Judges have not handled any significant number of divorce cases in the years prior to their appointment to the bench. Some have handled none. Even when a newly appointed judge has done any domestic work, it is extremely rare that this area of the law has involved any more than a small portion of their individual practice.

The Judicial Institute of Maryland is the official body charged with the training and continuing education of Maryland Judges. In spite of the fact that over one-half of all civil cases filed in Maryland directly involve family law issues, a minority of the courses offered relate to that field. In order to study this situation, the Judicial Institute appointed a special committee of Judges to examine the issue of expanding and revising the program of family law related courses that are offered for Maryland Judges. The Institute appointed to this committee judges from various areas of the State who are actively involved in the trial and management of domestic relations cases.

## RECOMMENDATIONS

It is essential that the quality of educational programs on subjects related to family law available to Maryland Judges be improved, increased in number and better structured. To this end it is suggested that the Judicial Institute of Maryland adopt a formal structured training program for Maryland Judges on family law issues. It is the recommendation of the committee that the following changes be implemented:

### I. INCREASE THE NUMBER OF COURSES ON FAMILY LAW RELATED ISSUES

- It is the feeling of the committee that more courses need to be offered on family law issues and that these courses cover fundamental as well as advanced aspects of family law. The courses that we are recommending be offered are as follows:

1. BASIC DIVORCE LAW - This course will cover the basic law of divorce, including the grounds of divorce, burden of proof, what needs to be proved to obtain a divorce, the history of marriage and divorce, defenses to claims for divorce, the law of alimony, judicial practice tips, and check lists.

Time: 1/2 day

2. ECONOMIC ISSUES RELATED TO FAMILY LAW - This course will cover questions on evaluation of pensions, evaluation of businesses, the tax consequences of divorce and related issues.

Time: 1 day



**3. ADOPTION, TERMINATION OF PARENTAL RIGHTS, AND GUARDIANSHIPS**

- This course will address the specific areas enumerated and cover the fundamental law regarding each.

Time: 1 day

**4. PSYCHOLOGICAL ISSUES IN FAMILY LAW CASES** - This course will cover child and developmental psychology, psychological effects of abuse on children, sexual abuse, and interpreting conduct of children, what is reliable psychological evidence, the significance and reliability of psychological testing.

Time: 1.5 days

**5. DOMESTIC VIOLENCE** - This course will address the fundamentals of domestic violence including the cycle of violence, criminal and civil proceedings arising out of domestic violence cases and a discussion of psycho-social issues related to domestic violence.

Time: 1/2 day

**6. JUDICIAL STRATEGIES IN DOMESTIC CASES** - A discussion of the uses of alternative dispute resolution mechanisms, case management techniques, use of experts, arbitration, special Masters and scheduling orders to handle family law cases.

Time: 1 day

**7. CHILD SUPPORT, PATERNITY, URESA AND ENFORCEMENT OF ORDERS** -

This course will cover the establishment of child support including the child support



guidelines, the law in these areas, the establishment of paternity, the URESA statute and enforcing support orders through contempt proceedings.

Time: 1/2 day

8. MARITAL PROPERTY - This course will address the law of marital property, including the criteria for marital awards.

Time: 1 day

II. THE STRUCTURE OF FAMILY LAW RELATED COURSES - In order to encourage judges to take a substantial number of family law related courses, a specific curriculum should be established. All the courses outlined above and any other courses deemed appropriate would be required courses to complete the entire curriculum. Those judges who complete the entire set of courses would receive special recognition from the Court of Appeals/Judicial Conference. This recognition will take the form of a diploma which will be presented at a ceremony held in Annapolis where judges who have completed the courses will be publicly acknowledged for having done so.

III. ADMINISTRATIVE LEAVE - In order to encourage judges to enroll in the Family Law Program, the Chief Judge would allow up to two additional administrative leave days per year for judges actively pursuing the domestic law diploma. In order to qualify for these additional leave days, a judge would actually have to "enroll" in the domestic law program of courses and use his/her other additional judicial education days for courses in the family law curriculum.

IV. PERMANENT SUBCOMMITTEE ON FAMILY LAW - The Judicial Institute should establish a subcommittee to continue to develop and monitor the family law curriculum.

This committee may be composed of individuals not on the Judicial Institute Board of Directors although there should be a liaison. Ideally, it would be composed of judges who have completed or are enrolled in the Family Law Program outlined above, and have demonstrated an interest in family law. The purpose of this committee would be to assist the Board of Directors of the Judicial Institute in conducting courses, evaluating programs and instructors and making recommendations on new programs or changes in existing programs.

V. GRADUATE PROGRAMS - The Administrative Office should seek funding for additional programs in the family law area. This funding would be used to pay for speakers to be brought to Maryland to conduct one or two day courses on family law topics. The purpose of these programs would be to give Maryland Judges an education/understanding of national trends and development in the area of family law. Priority for enrollment in these seminars should be given to judges who have completed or are enrolled in the domestic law diploma program. If space is available, judges who have demonstrated a continuing interest in family law would also be allowed to attend.

VI. OUT OF STATE PROGRAMS The Administrative Office should seek funding to send judges to out of state programs such as the National College of Juvenile and Family Law, the National Judicial College, and the American Academy of Judicial Education to attend domestic law programs. The materials and information obtained by the judges in these programs could be incorporated in Maryland programs where appropriate. The purpose of allowing judges to attend these programs would be to allow them to follow national trends in the area of

domestic law and to learn about developments in other states that may be useful to Maryland Judges.

It may be considered appropriate to require all Circuit and Appellate Court Judges to use at least one of their judicial education days for family law courses. This would help to alleviate any possible concern that judges who do enroll in the Domestic Law Diploma Program will be assigned a disproportionate share of domestic cases or be involuntarily assigned to any newly created family division.