Observations on Selected Aspects of the Seventh Judicial Circuit of Maryland's Efforts to Comply with the Letter of Spirit of the New Family Court Rule
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Consultant
Judge Charles D. Edelstein
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Central Focus of Study: Observations on Selected Aspects of the Seventh Judicial Circuit of Maryland’s Efforts to Comply with the Letter of Spirit of the New Family Court.
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INTRODUCTION

In March 1998, the leadership of the Seventh Judicial Circuit of Maryland, located in Prince George's County, requested short term technical assistance from the Justice Programs Office of the School of Public Affairs of the American University, Washington D.C. Under the auspices of the University's State Justice Institute-funded Courts Technical Assistance Project, Judge Charles D. Edelstein, Senior Status, Miami, Florida, was assigned to provide the technical assistance. Judge Edelstein, whose experience includes service as both a judge and general master in family law cases, has participated in court management consultancies for over twenty years.

Two field days were allocated for the effort. Judge Edelstein was to interview key family law judges, general masters and support staff. The issues to be addressed were:

1. How should cases be assigned to the general master?
2. What role should the District Court play in the Family Law Division in the area of domestic violence cases?
3. Given the increasing numbers of pro se litigants and the goals of a more user-friendly family law court, how should the pro se litigant be assisted in domestic relations cases?
4. How should the Juvenile Division relate to the other parts of the Family Law Division?
5. How should staffing patterns be revised to reflect the Court's attempts to comply with the letter and spirit of the new family law rule? In particular, should the Court create a new position of Director of the Family Law Division?

Judge Edelstein made a two day site visit on April 22 and 23, 1998. Five Circuit Judges, the Administrative Judge of the District Court, two General Masters, the Court Administrator and several staff members were interviewed. Judge Edelstein also attended a meeting of the Family Law Task Force.

Limitations of the Study

This is very complex area of the Court's jurisdiction. This fact coupled with the number and diversity of issues to be examined in a two-day site visit meant that the consultant could make only guarded observations. Accordingly, areas for further study are noted.
Issue One:
Assigning Cases to the Judge and General Master

In an individual calendaring system, the case is assigned to the judge at filing by a blind filing system. The judge handles all judicial activities in the case from beginning to end. If a general master is involved in hearing aspects of that case, the master might be assigned to that case by a blind filing system. Thereafter, that master would hear all aspects of the case within the master’s authority. A modification would team a master with a judge or judges, with the master hearing only cases assigned to that judge or judges.

In a master calendar system, the case would be assigned largely irrespective of who has had prior hearings in that case. The assignment might be made upon a determination of who had the earliest available trial or by virtue of specialization. For example, one judge might handle pre-trial aspects of a case and another the trials.

Other calendaring systems are hybrids of either model. In the Seventh Judicial Circuit, a master might hear all the master’s eligible issues in a case or not, depending upon the master’s/assignment office’s assessment of that case. The case would be assigned to one of the family division judges when ripe for judicial activity. That judge might hear all issues or if needed, it would be heard by one of the two backup judges.

The specific issue to be addressed is the assignment of cases to the general masters. Should a case be assigned to the master for the master to hear all matters regarding that case within the master’s authority, and if so, at what stage of the case should the assignment happen? The answer requires a slight detour.

The founders of the juvenile and then family court movement had a dream. That dream was enshrined in the phrase, “One family, one judge”. Families in turmoil need certainty and stability, they said. Changing judges added to the uncertainty these troubled families faced. The court’s jurisdictional lines made sense for the traditional areas of the courts responsibility. But there the issues were purely legal and factual. There the court was looking a still picture: did A hit B, did the driver of the Ford fail to stop at the stop sign, was the boundary on the east or west side of the creek?

In family law cases, the legal issues are overshadowed by the emotional ones. As one wag said, in the criminal division we see the worst at their best, and in the family division, the best at their worst. Then too, family law cases are more like motion pictures than still shots. A dispute between spouses is rarely just what happened on Friday the thirteenth. That day brings up memories and the emotions that go with them for most other similar days. A dispute about how much he spent on one item stimulates an exchange of the parties’ spending habits over the years and may inspire one to address the spending habits of the other’s parents.
In civil and criminal cases, once the jury has spoken and the judge reacted accordingly, the case was pretty much history. Not so in family law cases, for the parties have ties that bind— their children. Too often, even if no children are involved, the grudge match goes on ’til the money runs out, and occasionally beyond.

Practically, having one judge hear all aspects of a family’s case has not worked. First, these emotional and intractable cases present problems that are beyond the court’s ability to solve. Burnout is inevitable. It is a rare judge that can stay handling family law-related matters forever. So while some family cases remain in court for years or close out and return, the judge will have moved on. Second, judges by training, temperament and choice tend to avoid family law jurisdiction. In some instances, an assignment to the family division is greeted with a gnashing of teeth and rending of garments almost biblical in dimension. Third, the agencies that serve and support each aspect of family law jurisdiction have different target populations, eligibility criteria, and, often, funding streams. Fourth, trying to schedule all of these different types of cases efficiently and without tying the support agencies in knots is very difficult.

The idea is to find ways to balance the downsides of one family—one judge with the advantages this ideal seems to offer. If a master is assigned early on to a domestic relations case, and hears all pre-and post-judgement aspects of a master’s jurisdiction in that case, the goal of one family and one judge is closer to realization. Since judges will rotate out of domestic relations case assignments, the master provides much of the predictability family court advocates seek. It is much like French bureaucracy after WWII. Premiers changed from time to time, but the career government service kept France on an even keel.

If the master is to be assigned early on, the question is when. The settlement conference or its equivalent is usually the first time a case reaches a judicial officer. Assignment prior to and for this stage can create a problem. To the extent the master is acting as a neutral case evaluator, the master could not later try the case. Neutral case evaluation is a recent buzz phrase for a lawyer or judge looking a lawyer or litigant in the eye and frankly telling the litigant what the case is worth; how it is likely to fare in the courts. The same wag referred to above said telling someone his or her case was weak was like telling parents their child is ugly. Once a person has disparaged your offspring, you are not likely to want to hear more from him or her.

So, to the extent the masters give the parties an assessment of the strengths and weaknesses of their cases, the case may not be permanently assigned prior to that stage. The assignment could take place for the next hearing. Another approach would be to permanently assign the case prior to and for the scheduling conference stage. If the master did not evaluate the case, or if the parties stipulated for the master to try the matter, that case would stay with the master until the end. Which method works best for the Seventh Circuit requires a full knowledge of the masters’ current and projected practices, the nature of the bar, and the bar’s relations with the masters, which are beyond learning in a two-day site visit.

Predictability and stability in case assignment itself are factors. By that I mean if all cases are
permanently assigned at the first hearing after the scheduling conference, all will know that the master at the scheduling hearing will not be hearing other aspects of the case, and that once the next hearing is scheduled, the master who is assigned that hearing has the case forever. If the assignment for the scheduling conference were permanent and if the local practice was for the masters to forgo neutral case evaluation or for the parties to stipulate, and that was the normal practice and known by all, predictability results.

Issue Two:
What Role Should the District Court Play in the Family Law Division in the Area of Domestic Violence Cases?

What were once termed “domestics” in many jurisdictions and given little attention are now the subject of intense scrutiny and debate. Should these matters be handled in limited or in general jurisdiction courts and what should the relationships be between these courts if they have concurrent jurisdiction? The Seventh Judicial Circuit of Maryland is not alone in exploring these issues.

Typically, divorce cases are within the purview of general jurisdiction courts. The early ecclesiastical courts had exclusive jurisdiction of matters of faith and morals, leaving the King’s courts to deal with matters of law. Family issues, including divorce, were issues of faith and morals. The King’s courts eventually obtained jurisdiction of family issues in the chancery side of the court. With the merger of law and equity in courts of general jurisdiction, the courts of today were born.

Generally speaking, domestic violence cases arose from the limited jurisdiction court’s authority to hear misdemeanors such as assault, battery, disorderly conduct and other offenses against the person and the public order. Increasing attention to spousal abuse saw the expansion of the limited jurisdiction activity to include what amounts to eviction orders and injunctive relief.

So we have two courts with overlapping jurisdiction, which has given birth to the issue we address here: What should the roles of the District and Circuit courts be? How should their respective activities in the processing of domestic violence cases be coordinated? Some feel the District Court is the preferred place for domestic violence litigation to be resolved, while others urge their resolution in the Circuit Court. Those interviewed in Upper Marlboro reflect the views of their peers elsewhere.

The District Court advocates argue the following:

1. The District Court has greater ability to handle a higher volume of litigation than the Circuit Court.

2. The average lay person is more accustomed to accessing the District Court for the resolution of disputes.

3. District Courts tend to be dispersed in more than one location in the jurisdiction, making it easier
for the public to access the court. This is particularly true in the Seventh Judicial Circuit.

4. The District Court has more resources to help the pro se litigant than the Circuit Court.

5. General jurisdiction courts are not as familiar and comfortable with pro se litigants as limited jurisdiction courts.

6. The District Court can provide more immediate relief, and instant access is what the victim of domestic violence needs most.

7. Circuit Courts would have to add more security, especially at the contested hearing stages of domestic litigation, while the District Court’s security needs would not significantly diminish.

8. The legislature will never create enough Circuit Court judgeships to hear the volume of domestic violence litigation.

Those who feel domestic violence cases should be largely resolved in the Circuit Court say:

1. Domestic violence cases are of equal gravity as other family matters now heard exclusively in the Circuit Court. To have them heard in a limited jurisdiction is to deny their importance.

2. The relief sought in the District Court, which is the subject of a brief hearing, is very much the same as is sought or which could be given in the Circuit Court in hearings lasting hours and not minutes.

3. The issues of child support, exclusive possession of the marital residence and the like are historically the purview of general jurisdiction courts, not those of limited jurisdiction.

4. District Court judges have little experience in family law issues nor have they the opportunity for education and training in this area of the law.

5. The Circuit Court can reorder priorities to spend more time on domestic violence cases without seriously impairing its ability to deliver justice in other areas of its jurisdictions.

6. Currently, those with means can afford to litigate their family law issues including domestic violence, in the Circuit Court while the poor and/or unmarried get scant attention in a grossly overburdened District Court. In short, there are two justice systems in domestic violence cases: one for the have and one for the have nots.

Beyond who should hear these cases, there is no consensus as to the proper role of the court in how these matters should be handled by the judicial system. Some expressed a concern that the courts are being thrust into the role of social service agencies and are improperly acquiring executive branch functions. The court, in their view, should strictly function as impartial magistrates, and the
executive branch should provide whatever assistance litigants and their families need.

So then, three issues arise: in what direction should the courts go; what can be done now to improve the quality of justice in resolving domestic violence litigation; and how can both be accomplished without overstepping the boundaries of the courts as a separate branch of government. The first two issues are the subject of this consultancy; the third is a matter of discussion, debate, and perhaps a little soul searching by the family justice system itself.

In the ideal world, any level of court hearing domestic violence cases would have the time, concern, expertise, staff, and support services to provide high quality justice for both sides of domestic violence litigation. The courts would treat all litigants the same, irrespective of their wealth, social status, gender, and other characteristics. Domestic violence cases would be heard in one level of court to avoid the confusion and duplication inherent in concurrent jurisdiction. The court would be close to the people in attitude and geography. In short, it would not be the name of the court, but rather the court itself.

The Ideal and the Real

Until the ideal is embraced by the legislature and the courts, we deal with the real. If domestic violence litigation is to be largely in District Court, that court needs additional judge power, more case coordination, more support. The automated data bases need to be linked so that one hand can know what the other is doing. If there is any consensus on any issue of this consultancy it is this: at the touch of a key or button, all cases past and present involving any litigant in any family law issue should appear on the computer screens of those that have a need to know. Currently, neither court routinely knows when there are related cases in both courts.

When there is a pending Circuit Court matter and a related District Court action, such as a pending divorce case and an application for an ex parte relief in a domestic violence claim, the District Court should promptly and routinely refer the petitioner to the Circuit Court for relief. To do otherwise is to open avenues for manipulation, create confusion, and ambiguity and waste the precious resources of both courts. The policy is in place, but the mechanisms to support it are not. A gap stop manual system, drawing from and combining data from the date systems that support both levels of court, is needed now.

Both courts must be vigilant that the ex parte orders receive the careful and thorough attention they deserve. Close coordination between the District and Circuit Courts is essential. The Family Law Division Director should have the day-to-day responsibility to coordinate the monitoring and movement of cases involving claimed domestic violence between the courts. The Family Law Division Director, a position discussed below, would have the duty to oversee and coordinate service delivery for domestic violence cases in both courts. The Administrative Judge of the Family Division would have a policy-making and monitoring role here as well. These new roles and responsibilities are addressed later.
Issue Three:
Pro Se Litigants in the Family Division

The adversary system of justice is based on the notion that truth arises from the clash of equally well prepared, knowledgeable and able adversaries. Yet the typical divorce case often pits a lawyer for one side against an unrepresented party on the other. In many cases, especially in Prince Georges County, both sides are unrepresented, leaving the judge and others to separate the relevant from the emotional.

The theory demands lawyers for each parent and, in some instances, for the children as well. Tolerating this departure from the ideal is sanctioned by history, by constitutional decision and, at some levels, by hostility towards public support for lawyers for the poor. Many jurisdictions are searching for creative ways to help the poor litigant, not only for the party's benefit, but to ease the movement of the case through the courts, to make them more user friendly and to increase the efficiency of the process.

The Seventh Judicial Circuit's efforts to assist the pro se party are laudable but woefully inadequate when contrasted with the need. What follows is drawn from other jurisdictions grappling with the problem. Some measures are designed to help the litigant by providing lawyering from the inception to conclusion of each case. This is the preferred solution, for it helps make theory real and vastly aids the court in being more user friendly and efficient. Some steps short of this level of lawyering seek to provide guidance to lay litigants.

More Lawyering

1. The limited representation model is a departure from tradition. Rather than provide a lawyer for all phases of the case, representation on certain issues or at a selected phase of the case can get the lay person the help when most needed. Legal fees are reduced from the full representation model.

2. A list of low cost lawyers who have agreed in advance to charge from a standardized fee schedule which is easily accessed by the average first-time lay litigant is a must.

3. A well organized, staffed and supported pro se program which uses and oversees properly prepared senior law students has proven successful. Eligibility for free legal services must be carefully monitored and the results made public to assure the bar and the taxpayer that only those eligible get the services.

4. Expansion of the bar's efforts to provide free services to the poor.

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5. Of utmost importance is a long-term and well coordinated program to educate the taxpayers and their elected representatives that justice in a court setting in the context of the adversary system means providing lawyers to those who cannot afford them.

Other Initiatives

1. While the Internet has yet to reach the poor, especially poor minorities, a user-friendly web site with forms and instructions for the lay litigant will increasingly be searched.

2. A low cost, periodically updated video tape explaining the process in terms readily understood by all, available at libraries, community colleges and courthouses, is essential.

3. More prominent display of instructional materials and forms at the courthouses is an inexpensive aide.

4. An examination of the domestic relations processes, such as is being done in the Seventh Circuit's Juvenile Business Process Re-engineering Project, with a view toward simplification would materially assist the public and the bar to navigate the legal system.

5. Better signage at the Courthouse is a must.

Issue Number Four
Whence Juvenile Court?

Many jurisdictions have, and are, struggling with the place of the juvenile side of the court in the Family Division. Some in the family court movement stress the one judge-one family notion so that all family cases, including delinquency, abuse and neglect, and children in need of supervision or services, are heard by the same judge who is hearing or who has heard other matters involving that family. Others feel the one judge-one family notion is impractical. Their reasoning is briefly summarized next.

Juvenile respondents and their families rarely will appear in the divorce side of the court. Many, if not most, abuse and neglect litigants before the juvenile judge are not married. If anything, the greatest incidence of overlapping jurisdiction is between child support enforcement and domestic violence with divorce cases. The social service delivery network for juvenile cases is grossly inadequate. Other such services often have severe eligibility limitations. Trying to schedule juvenile cases with others makes life more difficult for those agencies who support the Juvenile Division. Keeping juvenile cases and not any others before one judge is just more efficient.

These are all arguments which can be the subject of study. Overlap studies track actual cases to determine the frequency of a family's being the subject of family-related litigation in multiple
divisions of the court. Eligibility for social services can be examined and eligibility criteria, perhaps, modified. Computer-supported scheduling may reduce wasted effort.

Some things can be done now. They stem from re-conceptualizing the juvenile justice process. Broadly, there are three functions at work: case-by-case judging, administrative and social service support for judging, and policy making. Judging case by case, i.e. providing individual attention in individual cases, is obviously the heart and soul of the judicial role. Support must be efficiently and effectively managed so that the judicial function is enhanced. Policy is made in individual cases and through the high level interaction of governmental agencies.

The administrative arm of the court needs to be more involved on a court-wide basis in providing and supervising administrative support to the juvenile judge. The Family Division Director and the newly created role of Administrative Judge of the Family Division would be the linkages among the policy setting levels of key agencies. Both could do outreach on all family law issues, including those particularly pressing to the Juvenile Court.

**Issue Five:**

**Creating the Position of Director of the Family Law Division**

In the discussions of integrating domestic violence and juvenile actions into the Family Division, mention was made of new positions, roles and responsibilities. Providing stronger administrative support to link each division administratively is critical. Creating a Family Division is more than assigning cases to a judge. It encompasses administrative case coordination functions, with the help of up-to-date computerized data bases. It means coordinated, complementary policy formulation and implementation. It also means the job is never done, for the Family Division will be constantly evolving. The creation of the position of Director of the Family Division is a necessary first step in that evolution.

The Director deals with what might be termed the environment external to the day-to-day operations of the court. The executive and legislative branches--generally schools, social service agencies, both public and private, and charitable and issue oriented groups--all have a role to play in the search for justice for the family unit. A court, especially a Family Division more closely linked with the community, cannot but be beneficial. When America was rural and courts were few and slower paced, the judicial system had names and faces. In many respects, there is no turning back but with some different attitudes and new technology, a little of history can be reclaimed. For if there is one idea most of us cherish, it is that thriving families are the foundation of the "good society".