

**FINAL REPORT AND RECOMMENDATIONS ON THE
POTENTIAL USE OF PRIVATE LAWYERS, WHO ARE
PAID REDUCED FEES BY A LEGAL SERVICES
FUNDER, TO REPRESENT LOW-INCOME PERSONS IN
MARYLAND WHO CAN NOT OBTAIN LEGAL
ASSISTANCE IN CIVIL CASES**

**TO: THE MARYLAND STATE BAR ASSOCIATION,
SECTION ON DELIVERY OF LEGAL SERVICES**

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May 25, 2007**

FINAL REPORT AND RECOMMENDATIONS ON THE POTENTIAL USE OF PRIVATE LAWYERS, WHO ARE PAID REDUCED FEES BY A LEGAL SERVICES FUNDER, TO REPRESENT LOW-INCOME PERSONS IN MARYLAND WHO CAN NOT OBTAIN LEGAL ASSISTANCE IN CIVIL CASES

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I. EXECUTIVE SUMMARY

On April 24, 2007, I issued a Preliminary Report. This is my final report.

The Maryland State Bar Association, acting through its Section on the Delivery of Legal Services and with the support of the Maryland Administrative Office of the Courts (“AOC”), commissioned this Report. My charge was to assess, and make recommendations about whether private lawyers paid reduced fees by government or another source should be employed more substantially in Maryland to represent poor people who can not now obtain legal assistance in civil cases.

In preparing this report, I have worked closely with a project steering committee, interviewed over 80 legal services lawyers and legal services program and court administrators (among others), primarily in Maryland, but also in other states and countries, and gathered and analyzed Maryland, national, and international information, including five Maryland legal needs surveys and reports dating from 1987. I also have considered comments offered in response to the Preliminary Report.

- **Maryland’s Civil Legal Services Programs:** Maryland has a diversified, complex and relatively well-funded civil legal services delivery system for the poor. The central component is the Legal Aid Bureau (“LAB”), the largest and oldest program, which provides a broad spectrum of legal services statewide. There are over 30 smaller, specialized providers, most of which are funded by the Maryland Legal Services Corporation (“MLSC”). Three other statewide entities provide services or support providers: the Maryland Volunteer Lawyers Service, Inc. (“MVLS”), the Pro Bono Resource Center (“PBRC”), and the AOC. There are self-help centers in each circuit courthouse, and statewide hotlines, including a Family Law Hotline that the Women’s Law Center (“WLC”) and the LAB operate, a WLC-operated Legal Forms Helpline, and a tenant-landlord hotline that Baltimore Neighborhoods operates. Online services include those offered by The Peoples Law Library. The State’s two law schools have well-developed clinical law and public interest programs.

The State’s major institutions—including the courts, the legislature, the governor’s office, the MLSC, the public providers, the private bar (and the state and local bar associations), and the law schools—have worked in partnership to create this impressive array of legal services programs.

- **Coordination and Collaboration:** Although there always is need for creative new legal services initiatives, and sometimes for a new organization to develop and test them, I believe the immediate need in Maryland is for better coordination and collaboration in the administration of existing programs and resources, and I base my major recommendations on a collaborative service model. See Part II.

- **Unmet Legal Needs Generally:** It is not possible to quantify the extent of unmet legal need today since the last quantitative study of the legal needs of low-income people in Maryland was in 1987 (it showed that four out of five people could not obtain the legal help they needed), and there have been substantial improvements in the delivery system since then. However, it is apparent that the majority, probably the substantial majority, of low-income people can not now obtain the legal help they need to resolve civil legal problems.

Annually, the MLSC grantees in Maryland, combined, provide some form of legal assistance to approximately 105,000 people a year.¹ Maryland’s legal needs studies have estimated that low and moderate-income households in Maryland have from one² to three³ legal problems a year. Under the MLSC standards, there are approximately 1,000,000 people in Maryland who are financially eligible for free legal services.

Using the most conservative assumption, “that only one-quarter of the one million Maryland residents who [are] eligible for free legal services experience...legal problems,” there is “a huge discrepancy” between “the number of cases that the MLSC grantees [are] able to handle and the number of legal problems of the poor that need...resolution in the civil justice system.”⁴ In Part III (B), I analyze this and other information on unmet legal needs generally in Maryland.

¹ For example, MLSC grantees closed 104,144 cases in FY 2006. *See* Chart in Appendix 5.

² Preliminary Report and Preliminary Recommendations of the Unmet Legal Needs of Moderate Income Persons in Maryland, Moderate Income Access to Justice Advisory Task Force (1996) (“1996 Moderate Income Task Force Report”), at 8. Because that task force defined “moderate income” to be \$15,000-\$45,000, there were many MLSC-eligible people within the scope of that study.

³ In 1988, the Advisory Council of the Maryland Legal Services Corporation (1988) estimated that there then were up to 1,067,455 Maryland residents who qualified for free legal services. Action Plan for Legal Services to Maryland’s Poor, A Report of the Advisory Council of the Maryland Legal Services Corporation (1988) (“1988 Legal Services Action Plan”), at 11.

⁴ The Maryland Judicial Commission on Pro Bono: Report and Recommendations (2000): (“2000 Judicial Pro Bono Commission Report”), at 2-3.

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- **Unmet Legal Needs in Family Cases:** During the past decade, the AOC and MLSC have taken important steps to increase the legal services that are available to indigent litigants in family cases. The AOC has funded and supports self-help centers in every jurisdiction in Maryland. The centers provide legal information and often legal advice, as well as help in completing simplified pleading forms, make referrals, and provide other services to pro se parties, primarily before, but also after they file pleadings. There also are a variety of programs that provide some post-filing representation to litigants, including in some contested cases. The Contested Custody Representation Project is an example in this respect.⁵

However, the many programs that provide legal services in family cases operate with substantial limitations. The self-help centers provide very limited services, there are limited numbers of volunteer lawyers for contested and protracted cases, and all of the programs have “triage” criteria (in addition to financial criteria), that limit intake, often strictly, by the specialty (e.g., domestic violence) or the program’s priorities (e.g., often based on threats to the physical safety of a spouse or child).

Therefore, there are many people who cannot obtain the legal help they need to protect important interests in contested family cases. For example, FY 2006 AOC data indicate that in “the Circuit Court for Baltimore City, 85% of all cases involved at least one self-represented litigant at the time the Answer was filed.” This figure was “70% statewide.”⁶ At the other end of the process, when trials were held, both parties were represented in only 27% of the cases, and one party only had counsel in an additional 33% of the cases. Thus, both parties were pro se in 40% of the cases, and one party was pro se in 73% of the cases.⁷ See Part III_(B), which also summarizes the results of five major reports in Maryland since 1988, a survey of state judges, data compiled by the AOC, and an external assessment of five of the State’s self-help centers.

Moreover, domestic cases comprise 46% of the total circuit court caseload in Maryland, and 64% of the total civil caseload,⁸ and involve fundamental interests (e.g., the right to marry and to the custody of children). The prevalence of pro se litigants imposes substantial burdens on the courts and administration of justice.

⁵ The self-help centers and Contested Custody Representation Project are described in Part IV.

⁶ FY 2006 AOC Fam. Ad. Report, at 37.

⁷ *Id.*

⁸ *Id.* at 18.

By all measures—the results of legal needs surveys and reports, the importance of the interests at stake, the extent of pro se litigation, and the need for lawyers in order to assure that case dispositions are fair—I believe the need for additional lawyers in family cases is compelling. For these reasons, I recommend that AOC and MLSC immediately increase funding for lawyers in family cases. See Recommendation 1, Part II.

- **Unmet legal Needs in Other Matters:** There are many are other types of civil matters in Maryland in which indigent parties can not obtain representation and in which important interests are at stake. These include housing/consumer cases when home ownership is an issue, e.g., foreclosure proceedings, and eviction proceedings when families are facing imminent homelessness. I recommend that, resources permitting, additional legal services be provided in such cases. See Recommendation 3, Part II.

- **Dominant Staff and Volunteer Service Models:** The dominant delivery models are the staff model, through which full-time lawyers employed primarily by nonprofit organizations provide legal services to the poor, and the pro bono model, through which volunteer lawyers provide representation. There are several relatively smaller projects through which private lawyers provide legal services to the poor for reduced fees, which are funded through grants and contracts from the MLSC and the AOC.

- **The Special Need for Private Attorney Involvement:** As noted above, Maryland legal needs studies and reports conclude that approximately 1,000,000 people are eligible for free legal services under the MLSC income eligibility guidelines.⁹ However, only about 500,000 or so are eligible under the more restrictive LAB/LSC financial guidelines.¹⁰ The LAB uses its guidelines for the substantial majority of its acceptance/rejection decisions.¹¹ This

⁹ State Action Plan and Report, Standing Committee of the Court of Appeals on Pro Bono Legal Service (2006) (“2006 Standing Pro Bono Committee Report”), at 2. In 2000, the Maryland Judicial Commission on Pro Bono said that in 1999, one million Maryland residents met the MLSC income standards for free legal services. 2000 Judicial Pro Bono Commission Report, *supra* note 4, at 2. In 1988, the Advisory Council of the Maryland Legal Services Corporation (1988), estimated that there then were up to 1,067,455 Maryland residents who qualified for free legal services. 1988 Legal Services Action Plan, *supra* note 3, at 8.

¹⁰ Under the LAB/LSC guidelines, “nearly half a million Maryland residents—including 141,000 children and over 50,000 individuals aged 65 and older—live[d] below the poverty threshold.” 2006 Standing Pro Bono Committee Report, *supra* note 9, at 2.

¹¹ The LAB has higher financial eligibility standards in a limited number of exceptional cases, and it uses the MLSC standards in a small percentage of its MLSC-funded work.

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leaves to the MLSC grantees and others, including the private bar, the major responsibility for representing the 500,000 or so indigents whose incomes are above the LAB guidelines but within the MLSC guidelines. I believe private lawyers, working for reduced fees, have untapped potential to efficiently and competently provide legal services to members of this group.

- **Reduced Fee Programs in Maryland:** In this report, I focus on three types of private attorney reduced-fee programs: the self-help centers, the Contested Custody Representation Project (“CCRP”), and the Judicare Program, which operated in Maryland from 1971-92.

- **The Self Help Centers:** Circuit courts, operating through their Family Division and Family Law Administrators and Support Services Coordinators, provide for services through: a) *contracts with attorneys* (mostly private lawyers, but LAB lawyers also in two jurisdictions) (the primary model, used in twelve jurisdictions); b) *contracts with legal services providers*, which either subcontract with private lawyers (four jurisdictions) or use a staff model, sometimes augmented with volunteer lawyers, to deliver services (three jurisdictions, in two of which the LAB is the provider); c) *hired lawyers and paralegals* who work for the courts (four jurisdictions); and d) *volunteer lawyers* (two jurisdictions). (Prince Georges County is counted twice since it uses both the b) and c) models.)

Based on an external evaluation of five selected centers¹² and my own assessment, I believe the centers have been successful, including through the reduced fee primary private-attorney contractual model.

- **The Contested Custody Representation Project:** In addition to the self-help centers, the Contested Child Custody Representation Project (“CCRP”), funded jointly by the AOC and MLSC, has a reduced fee, private attorney component and a staff component (operated by the LAB). The AOC provides funding to the LAB to provide some of these services, and with MLSC support, “private attorneys represent low-income persons in complex child custody cases at significantly reduced rates.”¹³ Based on an external evaluation¹⁴ and my own assessment, I

¹² Report On The Programs To Assist Self Represented Litigants Of The State Of Maryland: Final Report, John M. Greacen (November 14, 2004) (“Self-Assisted Litigant Report”).

¹³ Maryland Legal Services Corporation, *available at* www.mlsc.org/projects.htm (last visited April 20, 2007).

¹⁴ Model Child Custody Representation Project Evaluation Report (2003) (“MCCRP Evaluation”).

believe this project has been successful as well. The evaluation of the pilot projects in 2003 and the reports of the expanded projects since then, demonstrate that the cost per case of the reduced fee, private attorney component is substantially less than that of the staff component, and that the former component provides substantially more representation in litigation than the latter. On the other hand, the LAB lawyers who participate in and administer the staff component point out advantages of that model, e.g., their attorneys often represent litigants when they seek to modify decrees and to enforce orders, and the CCRP lawyers can call on LAB lawyers in other specialty practices for advice and to represent clients in related non-family matters.

- **Judicare:** “Judicare” is short-hand for a legal services program “patterned after the approach used in the health care field under the Medicaid and Medicare programs that support services provided by private medical providers paid on a fee-for-service basis by governmental funds.”¹⁵ It is a model that has been successful in Maryland, and it is the primary mechanism for providing legal services to the poor in many nations throughout the world, including those in Western Europe. See Part IV.¹⁶ Judicare is part of a “mixed” delivery model--a combination of staff and private attorney components--in several states today.¹⁷

¹⁵ Lawrence Spain, *Public Interest Law: Improving Access To Justice: The Opportunities And Challenges Of Providing Equal Access To Justice In Rural Communities*, 28 *WM. MITCHELL L. REV.* 367, 377-78 (2001).

¹⁶ In the 1960s in this country, in the earliest stages of the development of government-funded legal services through the federal Office of Economic Opportunity, there were some who argued that judicare should be part of a “mixed” model that included staff-provided, pro bono, and other service components. Gary Bellow, one of the national legal services leaders of the time, was one. Professor Jeanne Charn recalls: In helping to create the federal “Office of Economic Opportunity’s program of legal services for the poor in the early 1970s, Gary talked about the contrast between our program and the programs of other countries, such as Britain. These countries afforded universal access for moderate as well as low-income people and relied almost exclusively on the private bar, paid on a per case basis, for service delivery. Gary thought that the U.S. program would and should evolve in a similar direction, serving moderate as well as low-income people through a similar judicare program. The private bar judicare component would be in addition to an expanded corps of advocates working full time in specialized legal aid offices.” Jeanne Charn, *Symposium: The 25th Anniversary Of Gary Bellow's & Bea Moulton's The Lawyering Process: Service And Learning: Reflections On Three Decades Of The Lawyering Process At Harvard Law School*, 10 *CLINICAL L. REV.* 75, 77 (2003).

¹⁷ The national Legal Services Corporation has funded judicare programs in some states. “Although the primary means of delivering legal services to the poor since the development of federal support of civil legal services has been through the use of a staff attorney model, a judicare model utilizing private attorneys who are paid on a fee-for-service basis by the program offers an alternative delivery system. As early as 1966, the Office of Economic Opportunity

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In Part II, I recommend that the AOC and MLSC request proposals for and fund, in several jurisdictions, locally-administered judicare programs that will provide counsel in family law cases to litigants who can not now obtain representation. Although the model I recommend has features of the existing private attorney CCRP projects, it has one distinctive feature: eligible clients would be allowed to choose attorneys to represent them from a list of judicare-approved lawyers. The program administrator could recommend, even strongly recommend, an attorney or attorneys, but the ultimate choice would be that of the client. This right to choose, I believe, increases the autonomy of clients, places responsibilities on both the client (to select a lawyer) and the lawyer (to justify that confidence), and thereby invests both in the representation. It should also simplify and reduce the cost of program administration.

In Part IV, I describe Maryland's Judicare Program. Two of the major Maryland legal services study groups in the past 20 years, the 1988 Cardin Commission and the 1992 Family Law Council, recommended that Judicare be reinstated, funds permitting, and endorsed the use of private lawyers, paid with reduced fees, to deliver legal services to the poor as an effective and cost-efficient way to supplement the legal services provided by the Legal Aid Bureau, which they agreed was and should be the central provider.¹⁸

The judicare programs I recommend, however, would be limited in the following ways (among others):

1. *Funded with new resources:* Any funding for a new program should be with new resources, i.e., funds in addition to those that currently support civil legal services for

(OEO) Office of Legal Services, the forerunner of the Legal Services Corporation, funded the Wisconsin Judicare Program to serve 17 rural counties in Wisconsin." Spain, *Public Interest Law*, *supra* note 15, at 377-78.

¹⁸ 1988 Legal Services Action Plan, *supra* note 3, at 35; Increasing Access to Justice for Maryland's Families, Advisory Council on Family Legal Needs of Low Income People: A Joint Project of the Maryland Legal Services Corporation and the University of Baltimore School of Law (1992) ("1992 Family Law Council Report"), at 58. The Cardin Commission surveyed "judges, bar leaders, and human services organizations," and many recommended both "expanding the funding to the State's staffed legal services organizations serving the poor" and increasing "funding to the Judicare program." 1988 Legal Services Action Plan, *supra* note 3, at 24. In 1992, the Family Law Council said its "court access" committee had "identified the legal services programs that seem most cost effective in providing domestic legal services to low-income individuals." The Council began with the Judicare Program, saying: "The Committee identified the Judicare Program as one of the most successful and cost effective legal services programs in Maryland." 1992 Family Law Council Report, *supra*, at 57.

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the poor. The existing programs, including those for family law-related services, are essential parts of the current delivery system. The goal should be to expand that delivery system, not to divert existing funds to new purposes.

2. *Limited primarily to family cases that are contested:* Private lawyers have demonstrated their ability and willingness to successfully and economically handle these cases, especially when they require litigation-related legal services, and this is an area in which there are substantial unmet legal needs. See Part IV.

3. *Augment the predominant staff model:* I do not recommend that a judicare model replace any part of a staff model or become the primary method of delivering legal services to the poor in Maryland. Rather, in my view, it should augment and diversify the staff model, which today, in terms of legal resources in Maryland, is overwhelmingly the dominant model for representing the poor. Interestingly, the movement in many judicare countries, e.g., England and Canada, is to diversify in the other direction, by adding staff components to predominantly private lawyer, judicare models. See Part IV. The common goal is to strike a reasonable balance between these components so that the benefits of both can be realized.¹⁹

4. *Not supplant or replace existing legal services:* If an applicant can obtain legal assistance from another legal service program, that person should not be eligible for new judicare services. Again, the point is to increase the services that are available.

5. *Locally developed pilot projects through an open process:* I recommend that the programs be locally developed in several different jurisdictions as pilot projects, in response to an open process that invites any interested organization to submit a proposal. The indigent legal services delivery system in Maryland is comprised of statewide, regional, and local providers. All have important roles. All, including the statewide providers, can and do participate in local programs, either through their own branch (local) offices or in partnerships with local providers. Attempting to predetermine and establish a single structure for a new judicare program may have some advantages, but I believe they are substantially outweighed by

¹⁹ A number of commentators support mixed legal services programs that include both staff and subsidized private attorney components. See e.g., David Luban, *Lawyers and Justice: An Ethical Study*, 272 (1988); James Gordley, *The Meaning of Equal Access to Legal Services*, 10 CORNELL INT'L L.J. 220 (1977).

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the sensitivity to local circumstances, sense of local ownership, and benefits of experimentation that should come from several perhaps differing locally-designed and implemented projects.

6. *Carefully evaluated:* The pilot projects should be carefully evaluated to learn as much as possible about the strengths and weaknesses of this delivery mechanism. This knowledge could be used to refine largely successful programs or to terminate unsuccessful programs and replace them with a better model.

- **Program Structures:** In Part II, I identify the essential functions that a judicare program must perform, and suggest some possible structural models. I believe the AOC and MLSC should reserve judgment on the best model or models, however, until interested organizations have expressed their views through concrete proposals.

II. RECOMMENDATIONS

In this Part, I make three recommendations and I summarize the justifications for them. In Parts III and IV, I provide information that I believe justifies the recommendations.

RECOMMENDATION 1: THE MARYLAND ADMINISTRATIVE OFFICE OF THE COURTS AND MARYLAND LEGAL SERVICES CORPORATION SHOULD REQUEST PROPOSALS FOR AND FUND, IN SEVERAL JURISDICTIONS, LOCALLY-ADMINISTERED JUDICARE PROGRAMS THAT WILL PROVIDE COUNSEL IN FAMILY LAW CASES TO LITIGANTS WHO CAN NOT NOW OBTAIN REPRESENTATION.

A. Components of Recommendation I:

1. The focus on family law cases: As pointed out in Part I, and amplified in Part III, there are many compelling reasons to expand legal services in this area.

2. Client eligibility: To be eligible for representation, a person would have to satisfy both *financial eligibility* and *case-related criteria* based on characteristics of the legal problem, litigant, case, or required service. Given the extent of unmet legal needs and the limitations on resources, some form of triage will continue to be necessary.

a. Financial eligibility: The MLSC test would be applied, e.g., \$43,986 for a family of four. (Compare the LAB test: \$25,000 for a family of four).

b. Case-related criteria: A program administrator would have discretion under the case-related criteria that I propose. The goal is to provide for basic consistency and uniformity, but also to allow an administrator to respond to a compelling need

for legal services that might not be recognized by rigid rules. I recommend that the criteria include the following:

- **Types of legal problem:** Based on interviews with many legal services lawyers and program administrators, I recommend that the eligible legal problems include *contested custody cases* involving parents or legal guardians that satisfy the current Contested Custody Representation Project eligibility criteria, but for which there now are inadequate resources to provide representation;²⁰ *other contested custody cases*, i.e., those that do not satisfy the criteria, in which pro se parties cannot effectively represent themselves; *third party custody cases*, e.g., grandparents asserting the right to custody of a child who allegedly has been neglected or abused; *contested divorces with a spousal support or property issue*, especially where the support or property (e.g., a pension) would be the litigant's sole resource; and *other contested family cases* in which there is an important interest at stake and in which a litigant cannot effectively represent himself or herself.

The legal interests in such cases are substantial. For example, the interest in one's child is one of the most important that the law protects. Third party caretaker cases often are complex, and the litigants often are grandparents who are reluctantly seeking custody of their children's children, sometimes over their children's objections, making these emotionally difficult cases for everyone. Often, spousal support is the only resource available to a spouse, and the only means by which that person can avoid impoverishment.

- **Complex legal problems:** There are some family law issues that pro se litigants cannot handle adequately, e.g., interstate and inter-jurisdictional issues under the Maryland Uniform Child Custody Jurisdiction Act, or the distribution of pension plans, especially when those plans are undisclosed or only partially disclosed.

²⁰ In addition to MLSC income eligibility requirements, project clients are required to satisfy "at least one of the following criteria": 1) "The child is at risk due to abuse and/or neglect"; 2) "The opposing party is represented, the person seeking representation is the primary caregiver and the caregiver is a fit and proper person to care for the child"; 3) "The party needing representation is not the primary caregiver, but the primary caregiver is not fit and proper due to abuse and/or neglect, substance abuse, criminal conduct, or other incapacitating reasons"; 4) "The party needing representation has a complete denial of visitation"; or 5) "A specialized program (e.g., House of Ruth or local county domestic violence project) is unable to provide representation in the Circuit Court custody case after expiration of a protective order." MCCRP Evaluation, *supra* note 14, at 6.

- **Especially vulnerable and incapable litigants:** Mentally or emotionally handicapped litigants, youthful litigants, and parties who are illiterate, often will be unable to effectively protect their legal interests. In addition, although courts have the power to appoint counsel for children in some divorce cases, there often is not a source of funding for counsel when the parties are indigent.²¹ Children who are the subject of adoption petitions also sometimes need independent representation. Moreover, capacity to represent oneself is a relative concept. Some litigants can not effectively represent themselves even when the proceeding or issue is not inherently complex, for example, initial child-support and visitation proceedings, or when circumstances change, for example, when a party needs to modify a child-support order or visitation schedule.

- **Cases in which the opposing party is represented:** There are cases in which the opposing party is represented and the pro se litigant therefore is at a substantial disadvantage. Providing counsel to the pro se party may be the only way to make such proceedings fair.

- **When limited services will efficiently resolve disputes without extended litigation:** Several program administrators noted that the inability of some pro se litigants to draft an order, separation agreement, visitation schedule, or child-support agreement prevented the entry of orders and delayed or prevented the resolution of cases. Other litigants could resolve their disputes in mediation, and avoid further litigation, if they were advised by a lawyer. The judicare programs should make such limited legal representation available to otherwise pro se litigants. These services can be efficient and inexpensive means of resolving domestic disputes that otherwise would require more extensive litigation.

3. Possible structures of judicare programs:

²¹ In September, 2005, the Maryland Judicial Conference issued Standards of Practice for Court-Appointed Lawyers Representing Children in Custody Cases. The Standards provide guidelines for appointment of counsel in custody cases (Standard 7.1); urge circuit courts to “plan adequately in preparing their budgets to ensure they have sufficient funds to cover the costs of child counsel fees when the parties are not able to pay the full cost” and pro bono lawyers are unavailable (Standard 6.2); and identify “mechanisms to ensure attorney compensation,” including pre-payment by a party or the parties, payment out of “available funds,” and entry of a judgment for unpaid fees. (Standard 6.4) Despite these standards, several lawyers and program administrators have indicated that there are not adequate funds to pay for representation of children in many cases in which representation is required.

a. Partnership of a self-help center (“SHC”) and an organization that, among other things, would issue judicare vouchers (“voucher organization”): Under this model, a SHC and a voucher organization, for example a program that now administers a Contested Custody Representation project, a bar foundation, a local bar association or lawyer referral program, or a legal services provider, might develop a partnership proposal in which they divide responsibility for the implementation and operation of a judicare program as follows:

- **Intake:** The SHC would be primarily responsible for intake. SHCs now perform this basic function in most family cases in Maryland, and they now provide the first level of service in what should be a comprehensive and nuanced continuum of service. The intake interviewer would: 1) determine if the person is MLSC eligible, 2) identify the person’s legal problem(s), 3) assess the person’s capacity for self-representation, and 4) determine whether the person is eligible for existing legal services. This would add some tasks that a number of SHCs do not now perform. For example, a number of SHCs do not now do financial eligibility checks, and there are differences in the extents to which they assess a litigant’s legal problems and self-help capacities. Some SHCs might have to add a paralegal or other legal interviewer to perform these tasks. A byproduct would be to enhance the quality generally of the SHC intake interviews.

- **Referrals for vouchers:**

Referrals by the SHC: The SHC also would be responsible, in part, for identifying litigants who are potentially eligible for judicare services and referring them to the voucher organization. If possible, the SHC would make a *phone call to, or communicate by internet with, the voucher organizational staff member while the person is in the SHC* to minimize unsuccessful referrals and to avoid creating false expectations. Ultimately, the *voucher organization would make the decision*, which could be that: 1) the person is not eligible; 2) the person is eligible (in which case, the SHC either could issue the voucher at the direction of the voucher organization or direct the person to the voucher organization, which would issue the voucher); 3) the person might be eligible, but the voucher organization needs to obtain additional information; or 4) the person should be told about the judicare program and to call the voucher organization in the future if some event occurs, e.g., the opposing party, who is not now disputing custody, changes his mind and disputes it. The SHC *would not refer any person for judicare services if they were eligible for, and could receive legal representation through another program.*

I recommend that the voucher organization make the ultimate decision for several reasons. First, in discussing this issue with representatives of SHCs, they were reluctant to make the ultimate decision given their close affiliation with the court. They worried that one party might lose confidence in the impartiality of the court if the SHC denied a voucher to them but granted one to that party's opponent. Second, in some cases, the need for counsel will not become clear until after that person has left the SHC. Third, there are a number of other functions involved in a judicare program, including those identified immediately below, which most SHCs are not now equipped to handle, but other organizations are.

- **Referrals by another person, provider or agency:** Others, including LAB and other legal services and pro bono lawyers, masters and judges, and staff of the two major family law hotlines (the Family Law and Legal Forms hotlines), could make referrals for judicare services directly to the voucher organization. There are critical phases in the life of a domestic case, before or at which referrals could be appropriate. These include emergency hearings, scheduling conferences, pendente lite hearings, settlement conferences, pretrial conferences, and trials. (Appendix 1 is a flow chart prepared for Baltimore City Circuit Court that shows the various stages of a domestic case.) These referrals might be of pro se litigants who did not come through the SHC, or who did but whose circumstances have changed.

- **Allocation of vouchers:** In a grant application, the applicant would use existing data, like that gathered by local pro bono committees, to identify the number of vouchers that it believed was reasonably necessary and that it could efficiently distribute during the grant period. The number of vouchers an applicant requested also would depend on the amount of available funds and the cost of a voucher, e.g., if the maximum reimbursable cost of a family case is \$1,600 (20 hours at \$80), then it would cost \$40,000 to fund 25 vouchers. See discussion below, including of waivers and waiver process.

- **Distributing vouchers:** When the voucher organization issued a voucher, it would encumber the maximum fee for that representation. If the case cost less than the maximum fee, the "savings," when aggregated, would be available to the voucher organization to pay for additional vouchers or for excess fees in other cases, authorized pursuant to a waiver process. The voucher could be modeled on the multi-copy form used by Maryland's initial Judicare Program. (See Appendix 2.) Such a form could record client eligibility; constitute a retainer agreement; contain a "billing" section that the lawyer would fill out (work done, time expended,

and fee requested); contain a provision for the “payment decision” (the amount of the fee the voucher organization approved); and contain check-the-box provisions for other information that would be helpful in evaluating the program.

- **Recommending lawyers:** The degree to which the voucher organization recommended a lawyer or lawyers when it issued a voucher could vary considerably. It could provide a list of judicare lawyers and contact information, or suggest a more limited number of lawyers, or recommend a single lawyer (perhaps the next lawyer on a rotation list). It might contact a lawyer in advance, before it makes a referral, to make sure the lawyer would take the case if asked. Or, the organization might leave the selection entirely to the client. This should be determined based on local circumstances, and should be addressed in the grant application. This flexibility could make the step from an existing CCRP program to a judicare program a small, incremental one or a more substantial one.

- **Conflicts of interest, fairness, and the appearance of fairness:** When both parties are pro se and ask a single voucher organization to issue them both vouchers so they can retain separate lawyers, conflicts of interest, fairness, and appearance-of-fairness issues may arise, even though the lawyers to whom the parties are referred do not work for the organization.

The basic conflicts rule, Rule 1.7, Maryland Rules of Professional Responsibility, precludes “representation” of a client if the lawyer has a conflict. New Rule 6.5 modifies Rule 1.7 by allowing “short-time limited” representation when the lawyer does not “know” that the representation poses a conflict. The question that will arise for the voucher organization is whether it can provide vouchers to both parties in a case. The quick answer is that assuming the organization does not represent either party, which I assume it will not, it could grant vouchers to each, and could refer each to a separate attorney. Several experienced lawyer referral administrators suggest that when both parties are seeking counsel, to be safe, different staff members in the voucher organization could conduct the interviews and make the voucher decisions. The “information relating to representation” that each party provides to the organization is covered by the confidentiality protections of Rule 1.6.

This does not resolve all of the issues, however. If the voucher organization gives limited advice to an applicant in the process of determining that applicant’s eligibility for counsel, the organization would form a limited attorney-client relationship with the applicant that probably

would preclude it, even under Rule 6.5, from dealing with the opposing party. I think it would be preferable that the voucher organization not provide limited advice to the applicants for lawyers.

In addition, if the voucher organization obtains more detailed information from an applicant, and makes a substantially discretionary judgment to provide a voucher to one party, it might be unfair, or appear to be unfair, for it then to decide whether to provide a voucher to the opposing party.

Under the circumstances in the preceding two paragraphs, it could be necessary or appropriate to have a second organization, perhaps the self-help center, make the voucher decision, or to have an arrangement with a pro bono or another program to provide representation in such cases. These are fact-dependent issues, and applicants should address them and how they will prevent or resolve them.

I do not recommend adding a “merits” test to the two voucher eligibility tests, other than the extraordinary non-frivolous claim test embodied in Federal Rule 11 and Maryland’s counterpart, Rule 1-311. Many judicare programs in other countries require threshold showings by applicants that their claims have merit, i.e., there is good reason to think they will or reasonably may prevail. This is not the practice in judicare programs in this country, and should not be, in my view. I acknowledge, however, that there can be a thin line between an appropriate appointment-of-counsel assessment—based on the person’s capacity for self-representation and whether the person or case satisfies the admittedly general criteria that I propose—and a decision based in part on the interviewer’s assessment of the merits of the claim. To the extent a program considers the merits of claims in making voucher decisions, it will need to make special efforts to identify and resolve the conflicts and fairness issues.

- **Recruiting, training and supporting judicare lawyers:** This would be the responsibility of the voucher organization. In those jurisdictions in which there are substantial pools of family lawyers available, the organization could reasonably establish experience requirements for participation on judicare panels, e.g., three years of family law practice. In jurisdictions in which there are fewer family lawyers, a voucher organization could provide training and/or mentoring, and require these as conditions of participation. Where the voucher organization also administers a pro bono program, or collaborates with one, it could set pro bono requirements for judicare program participation as well. All judicare lawyers would have to be in good standing with the bar and have adequate malpractice insurance.

The keys in recruiting, according to many, are: 1) keep the process simple, with as little paper work as possible; 2) pay a more substantial fee; 3) provide no-cost or reduced-cost educational programs that will help participating lawyers generally in their practices, and mentoring programs for less-experienced lawyers; 4) refer cases within the expertise of the lawyers; and 5) use personal contacts, particularly from local judges.

- **Paying lawyers:** The voucher organization would be responsible for this as well.

The grant conditions could establish the fee-payment process, e.g., requiring that the attorney complete work on the case and obtain a decree or judgment before submitting the bill, or authorizing some form of interim payment. Alternatively, this could be left to the grantee.

In any event, lawyers would be paid at an hourly rate, with cases caps, but subject to a waiver provision in exceptional circumstances. In establishing hourly rates and case caps, there are two options. They could be set on a statewide basis or left to local discretion, with the amount/cap established and justified in the grant application. Funding for the Contested Custody Representation Project and self-help centers provide contrasting examples.

Currently, in the Contested Custody Representation Project, there is a statewide hourly rate (\$50) and uniform case cap (\$1,000), subject to a \$500 waiver provision, allowing a total payment of up to \$1,500. To be eligible for the waiver, the lawyer must first work five pro bono hours after the original 20 for which the lawyer is initially compensated.

In contrast, each circuit court, acting through the county procurement process, sets the hourly rate for lawyers who provide services in the jurisdiction's self-help center. The range of hourly rates is substantial, from \$40 to \$100.

I recommend establishing a statewide rate and cap to provide equity and budgetary predictability; that the rate be \$80 an hour, with a cap of \$1,600 (for 20 hours of work); and that there be a waiver provision that authorizes up to \$800 in additional payments (for a total amount of \$2,400), if the lawyer first contributes five hours of "excess" pro bono work to the representation. I recommend these hourly rates and caps to encourage more lawyers to participate in judicare programs. Some of the current reduced fee programs have problems recruiting lawyers, in part because of the low hourly rates and case caps. The recommended rates and caps are still substantially below the private legal services market in family cases, but they should enable additional lawyers to participate. Even with these increased rates and caps, the per

case costs of the reduced fee model should still remain substantially below those of a staff model. See Part IV.

Whatever the judicare hourly rate, case cap, and waiver provisions are, the AOC and MLSC should discuss whether to make the MLSC-funded Contested Custody Representation Project's hourly rate, case cap, and waiver provisions consistent with those of the judicare programs. It is likely that many of the same lawyers will be involved in both sets of projects, and will be providing similar types and levels of legal services in both projects.

It might also be appropriate to establish fee schedules for different tasks, i.e., task caps, especially for limited or discrete task representation, e.g., \$350 as the maximum fee for advising a client prior to and after mediation. Maryland's initial Judicare Program used such a schedule. Alternatively, rather than a rigid cap, it could operate as a benchmark, requiring an attorney to justify a fee request in excess of the schedule. This might be especially appropriate when a lawyer provides limited representation. See below.

The statewide funding source could reserve some role in considering and approving payments, perhaps those in excess of a fixed amount. However, under this delivery model, involving both a SHC and voucher organization, it is hard to see what the benefit would be from such an arrangement. Those organizations should be able to provide the necessary oversight, and they can comprise an advisory committee, e.g., from the local bar association to review certain fee requests, if they wish to.

- **Providing quality Control:** The voucher organization, with the concurrence of the SHC, would establish quality control mechanisms. These might include mandatory training and mentoring for less experienced lawyers, a client-complaint mechanism, and administration of a post-representation client satisfaction questionnaire. The voucher organization also would be primarily responsible, with the assistance of the SHC, for gathering the information required to evaluate the project and for providing it to the funding source.

- **Providing information to the public:** Both the SHC and voucher organization would be responsible for generally publicizing, and informing the public—potential clients, lawyers, court clerks and administrators, social services providers, and others—about the program.

- **Limited representation:** As noted above, in identifying unmet legal needs, several program administrators said pro se litigants often need help with a discrete task, such as

drafting an order, separation agreement, visitation schedule, or child-support agreement, or preparing for mediation. Such limited representation can resolve the dispute and avoid further and protracted litigation. Discrete task representation could be provided: 1) by expanding the services provided by SHCs; 2) by bringing it within the judicare program, perhaps through “limited-service” vouchers; or 3) by relying on a specialized panel of lawyers, recruited and supported by the voucher organization and paid by contract, to provide such services. This should be addressed in the grant application process.

b. Other possible structures: There are other possible structures, e.g., involving local bar foundations, statewide providers in partnership with a SHC or CCRP program, and local bar associations and lawyer referral organizations, which interested and creative applicants should be able to propose in a RFP or NOFA process.

RECOMMENDATION 2: CLIENTS WHOSE RESOURCES MAKE THEM FINANCIALLY INELIGIBLE UNDER THE LAB GUIDELINES, BUT ELIGIBLE UNDER THE HIGHER MLSC GUIDELINES, COULD BE REQUIRED TO CONTRIBUTE A SMALL AMOUNT TO THE COST OF THEIR REPRESENTATION, ABSENT GOOD CAUSE.

Several of the contested custody projects, as well as other reduced-fee programs in Maryland, require clients to contribute a small amount to the cost of their representation, usually \$25, and they collect it as a prerequisite to placing the person with a lawyer. Many of the program administrators and lawyers to whom I talked thought this had a salutary effect by communicating to the client the seriousness of the matter and the necessity that the client make a commitment both to pursue the matter and to his or her lawyer.

Other program administrators and lawyers thought it would be a mistake to charge an administrative fee since it would impose an economic burden on already financially-strapped people, and might deter some from pursuing valid claims solely because they could not afford to do so. Commenting on the Preliminary Report, the LAB argues that “contributing even \$25 toward legal help is likely to mean that a [low-income] family will cut necessities, such as food, payment of utility bills or rent, gasoline, health care or needs of children.” Letter of May 14, 2007.

Although I think the requirement of a small, fixed administrative fee serves a purpose, and that it should not prevent litigants from obtaining counsel if there is a flexible “good cause”

waiver provision, I think the LAB raises a valid concern. In the first instance, I would leave to the pilot project applicants the decision whether to charge small administrative fees and if they do, to evaluate their impact. Such evaluations would inform future decisions.

RECOMMENDATION 3: WHEN RESOURCES PERMIT, THE MARYLAND ADMINISTRATIVE OFFICE OF THE COURTS AND MARYLAND LEGAL SERVICES CORPORATION SHOULD REQUEST PROPOSALS FOR AND FUND A PILOT PROJECT OR PROJECTS TO PROVIDE LEGAL SERVICES TO INDIGENT LITIGANTS IN SELECTED HOUSING CASES.

There are many housing cases in Maryland, including thousands of foreclosure and landlord-tenant cases annually, in which MLSC-eligible pro se litigants face the loss of their homes or face eviction and imminent homelessness. Many of these litigants have the same need for, and claims to legal representation as their counterparts in family cases. There are good models of legal assistance projects that serve such litigants.

For example, in some legal service and pro bono projects, a lawyer, or a paralegal supervised by a lawyer, provides legal assistance to litigants who appear in a housing or landlord-tenant court on a particular day. The lawyer or supervised paralegal might advise some, represent others in court, and refer others for more complete representation where available. The LAB's Rent Court paralegal program and the Public Justice Center's Tenant Advisory Program, both of which are staff programs, are good examples of such programs. Other jurisdictions have developed successful lawyer-of-the-day programs in housing courts as well, with legal services, pro bono, and bar association programs providing the lawyers.²² There should be room for a reduced-fee partner in such projects. The family law model of legal services, which includes self-help centers and staff and reduced fee representation, could be used to develop pilot projects in selected housing cases. These legal needs rank among the highest in the Maryland legal needs studies and reports, the interests of the litigants can be vitally important, and lawyers can help to produce more just dispositions.

I now turn to the bases for my recommendations, beginning with a description of the current legal services delivery system in Maryland and the unmet legal needs of Marylanders.

²² See, e.g., Handbook on Limited Scope Legal Assistance, a Report of the Modest Means Task Force of the Litigation Section of the ABA (2003), published online at <http://www.abanet.org/litigation/taskforces/modest/home.html>, at 35-37, and n. 101; Brenda Star Adams, *Note: "Unbundled Legal Services": A Solution to Problems Caused by Pro Se Litigation in Massachusetts's Civil Courts*, 40 New Eng. L. Rev. 303, 314-19 (2005).

III. UNMET LEGAL NEEDS IN MARYLAND

A. Maryland's Existing Legal Services Delivery System: Maryland has a diversified, complex and relatively well-funded civil legal services delivery system for indigents.²³ It has these components:

- **A strong legal aid core:** The Legal Aid Bureau is a statewide, staffed legal services program. A recent report said: "The centerpiece of the legal services delivery system in the state is the LAB. The approximately 80 staff attorneys in thirteen offices statewide handle thousands of cases, primarily in the areas of housing, public benefits, consumer, employment and family law."²⁴ This is the oldest and most important provider in the State.

- **A broad network of specialized, primarily staff-model legal services programs,** most of which are **funded,** at least in part, **by the Maryland Legal Services Corporation** ("MLSC"), which was created in 1982.²⁵ In the aggregate, the clients of these programs include people who have virtually every kind of civil legal problem. The diversity of clients whom MLSC grantees serve, the broad range of legal problems these clients have, and the

²³ In FY 2006, roughly \$44,570,000 was expended for civil legal services (from all funding sources), approximately \$15,680,000 for legal services mandated by federal or state law. Information provided by Maryland Legal Services Corporation.

²⁴ 2006 Standing Pro Bono Committee Report, *supra* note 9, at 9. "The Legal Aid Bureau is by far the largest provider, and the only one which is truly statewide. It has offices throughout Maryland and serves large numbers of clients from every part of the state. The Bureau's size makes it a significant player in the justice system in the state. It also has the potential to focus substantial resources on major legal problems that affect the low income community. It has the inherent capacity to develop and implement statewide strategies to respond to a variety of legal issues and provides a solid core for the work of the overall legal services delivery system." *REPORT ON THE EVALUATION OF THE LEGAL SERVICES DELIVERY SYSTEM IN MARYLAND*, John Tull & Associates (June, 2000) ("2000 Legal Services Delivery System Evaluation"), at 2.

²⁵ In addition to LAB, they include: Allegany Law Foundation; Alternative Directions; Asian Pacific American Legal Resource Center; Associated Catholic Charities of Baltimore; Catholic Community Services; Community Law Center; Community Legal Services of Prince George's County; Domestic Violence Center of Howard County; Harford County Bar Foundation; Health Education Resource Organization (HERO); Heartly House; Homeless Persons Representation Project; House of Ruth; Law Foundation of Prince George's County; Maryland Civil Liberties Union Foundation; Maryland Coalition for Inclusive Education; Maryland Crime Victims Resource Center; Maryland Disability Law Center; Maryland Public Interest Law Project; Maryland Volunteer Lawyers Service; Mid-Shore Council on Family Violence; Montgomery County Bar Foundation; Pro Bono Resource Center of Maryland; Public Justice Center; St. Ambrose Housing Aid Center; Sexual Assault Legal Institute; Southern Maryland Center for Family Advocacy; University of Maryland/ HIV Project; Whitman-Walker Clinic Legal Services Program; and YWCA of Annapolis and Anne Arundel County.

geographical dispersion of the grantees make this network a vital and distinctive part of Maryland's delivery system. However, this network is the product of individual funding decisions with limited funds, and therefore has patchwork qualities. An evaluation of Maryland's legal services delivery system described the LAB and the other MLSC grantees as follows:

What sets Maryland apart dramatically from other states is the configuration of its service providers. It has one very large program funded by the national Legal Services Corporation and by the Maryland Legal Services Corporation, and whose area of responsibility covers the entire state. At the same time, it has more than 30 small providers which offer legal services to low income persons in the state. Some of the small providers are stand-alone organizations that target very specific populations, or legal problems. Others are part of larger organizations, which focus on specific populations or legal problems, and serve as the legal service provider for persons served by those organizations.²⁶

Along with the LAB and MLSC, there are three other Statewide entities that either comprise or have helped to create the State's delivery system. They are the Maryland Volunteer Lawyers' Services, Inc. ("MVLS"); the Pro Bono Resource Center ("PBRC"); and the State's Administrative Office of the Courts.

- **MVLS: A statewide volunteer lawyer program.** Founded in 1981, MVLS is the state's largest provider of pro bono civil legal assistance, having helped more than 40,000 low-income individuals since its creation. Together, MVLS and local pro bono providers recruit, and place cases with volunteer lawyers across the state. In 2006, this network was described as follows:

... [T]here are locally-based general pro bono referral programs in Allegany, Harford, Montgomery and Prince George's counties and all operate through the local bar associations' foundations. There is also a regionally-based Mid-Shore Pro Bono Project covering Caroline, Dorchester, Queen Anne's and Talbot Counties. All are recipients of MLSC funds. MVLS maintains its primary office in Baltimore City, as several staffed projects in other areas and refers cases to lawyers in all counties except for Allegany, Montgomery, and Prince George's. These programs often receive referrals from the LAB and other legal or social services programs and screen for income eligibility, merit and priority. They typically handle family law, landlord-tenant, bankruptcy, consumer, trusts and estates, school discipline, special education, domestic violence, tax and real estate issues."²⁷

- **PBRC:** PBRC provides statewide "clearinghouse" and "coordination" functions

²⁶ 2000 Legal Services Delivery System Evaluation, *supra* note 24, at 2.

²⁷ 2006 Standing Pro Bono Committee Report, *supra* note 9, at 9-10.

for pro bono legal services. PBRC promotes “equal access to justice by coordinating and supporting volunteer civil legal services, providing resources and support for legal advocates for the poor, and promoting cooperation within the legal community.” It is a separate non-profit organization that is closely affiliated and works with the Maryland State Bar Association. It “works closely with legal services providers and local bar association pro bono projects throughout the state to help recruit pro bono attorneys,” and “provides support services to volunteers and programs” through “free or discounted training (including MICPEL courses), and pro bono court reporting services.”²⁸

- **AOC: Developing a network of family law legal services.** Another strength of Maryland’s delivery system is the “support that legal services receives from key institutions within the state. The judiciary is very supportive, with the Chief Judge of the Court of Appeals, the state’s highest court, being deeply engaged in a creative and thoughtful way. The state legislature provides significant bipartisan support for the legal services delivery system”²⁹ AOC funds an array of family law-related legal services. These include the self-help centers in each of Maryland’s 24 jurisdictions; Protective Order Advocacy Representation Projects, which provide legal advice and representation, as well as other services, to “victims of family violence;” and a legal representation project for contested custody cases.³⁰

- **Hotline and online services:** These include: a statewide Family Law Hotline operated by the Women’s Law Center (“WLC”) and the LAB; a WLC-operated “Legal Forms Helpline”, which is “an 800 number litigants can call with questions about the use of the domestic relations forms maintained on the state judiciary website.”³¹ The Peoples Law Library, enhanced and operated by the Maryland Legal Assistance Network (MLAN), provides online legal information and other forms of assistance in a number of areas.

- **Law school clinics:** Both the University of Baltimore and the University of Maryland Schools of Law offer extensive and diversified clinical courses and public service opportunities.

²⁸ www.probonomd.org

²⁹ 2000 Legal Services Delivery System Evaluation, *supra* note 24, at 2.

³⁰ Self-Assisted Litigant Report, *supra* note 12, at 6-7.

³¹ Self-Assisted Litigant Report, *supra* note 12, at 6-7. Baltimore Neighborhoods, Inc. operates a Statewide tenant-landlord hotline as well.

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The charts in Appendices 3-7 show the distribution of MLSC grantees throughout the State (Appendix 3), the types of cases handled by MLSC providers (Appendix 4), the geographical distribution of legal services (Appendix 5), the geographical distribution of legal services compared to the distribution of poor persons (Appendix 6), and the total numbers of free legal services providers by county in Maryland (Appendix 7). The information set forth above, and in these charts, supports several conclusions:

- Maryland has a statewide network of legal services providers comprised of over 35 statewide, regional, and local providers, which operate largely independently. The major organizational need is for coordination and collaboration.
- The bulk of the MLSC-funded legal services provided is in the areas of family law (43% of FY 2006 cases), and housing (26%).
- There appears largely to be rough parity, but with some disparities, in the geographical distribution of legal services throughout the State, at least as measured by numbers of opened and closed cases compared to the “poverty” populations in those jurisdictions.
- The vast majority of legal services providers in Maryland are organized primarily as staff providers. There are a substantial number of pro bono providers, and a smaller number of providers that pay private lawyers reduced fees to provide non-mandated services to indigents. See Part IV.³²

B. The Gaps in Legal Services

Although, during the past 35 years, there have been dramatic improvements in the delivery of legal services to Maryland’s poor, there still are substantial unmet, or only partially met, legal needs.

1. Federal and State financial eligibility guidelines

The following charts contain the two major sets of financial eligibility standards in Maryland, those of the LAB, based on the standards of the national Legal Services Corporation (“LSC”), and those of the MLSC.

³² Contractual lawyers, including private lawyers, also provide legally mandated services in prison, mental health, child-in-need-of-assistance, and guardianship proceedings, among others.

Chart 1

Maryland Legal Aid Bureau, Inc. Financial Eligibility Guidelines (125% Federal Poverty Income Guidelines)

Family Size	Weekly	Biweekly	Monthly	Yearly
1	\$235	\$471	\$1,021	\$12,250
2	\$317	\$635	\$1,375	\$16,500
3	\$399	\$798	\$1,729	\$20,750
4	\$481	\$962	\$2,083	\$25,000
5	\$563	\$1,125	\$2,438	\$29,250
6	\$644	\$1,288	\$2,792	\$33,500
7	\$726	\$1,452	\$3,146	\$37,750
8	\$808	\$1,615	\$3,500	\$42,000
9	\$889	\$1,779	\$3,854	\$46,250
10	\$971	\$1,942	\$4,208	\$50,500
for each additional family member			Add \$4,250	

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Chart 2

MLSC Financial Eligibility Guidelines (50% of Maryland Median Income)

Family Size	Annual Income	Monthly Income	Weekly Income
1	\$22,873	\$1,906	\$440
2	\$29,910	\$2,493	\$575
3	\$36,948	\$3,079	\$711
4	\$43,986	\$3,666	\$846
5	\$51,024	\$4,252	\$981
6	\$58,062	\$4,838	\$1,117
7	\$59,381	\$4,948	\$1,142
8	\$60,701	\$5,058	\$1,167
9	\$62,020	\$5,168	\$1,193
10	\$63,340	\$5,278	\$1,218

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The MLSC guidelines roughly double the number of people financially eligible under the LAB/LSC guidelines. Maryland legal needs assessments have concluded that approximately 1,000,000 people are eligible for free legal services under the MLSC income eligibility guidelines.³³ About 500,000 or so are eligible under the LAB/LSC guidelines.³⁴

The LAB uses the above LAB guidelines for the substantial majority of its acceptance/rejection decisions.³⁵ This leaves to the MLSC grantees and private lawyers, working for reduced fees, the major responsibility for representing those whose incomes are above the LAB, but below the MLSC guidelines.

2. General measures of unmet legal need

This following is a summary, arranged chronologically, of the findings of Maryland legal needs studies and reports that document the inability of the substantial majority of Maryland's indigent residents to obtain the civil legal assistance they need. The substantial increases in civil legal services since these reports, particularly those discussed in Part IV, have responded, in part, to some of the findings and recommendations in these reports, but they still are accurate in most respects.

1988: The MLSC Advisory Council, chaired by now United States Senator Benjamin Cardin ("Cardin Commission"), contracted for a legal needs survey that included phone calls to over 800 households in Maryland. The Council "found that less than twenty percent of Maryland's low-income population with critical consumer, landlord-tenant, domestic, social security, or other civil legal problems is presently served by existing legal aid or voluntary private attorney efforts."³⁶ It said that the "typical low-income household surveyed had 3.29 legal problems per year (excluding repeat occurrences of identical problems). 67.5% of the persons interviewed identified one or more such legal problems experienced by household

³³ 2006 Standing Pro Bono Committee Report, *supra* note 9, at 2. In 2000, the Maryland Judicial Commission on Pro Bono said that in 1999, one million Maryland residents met the MLSC standards for free legal services. 2000 Judicial Pro Bono Commission Report, *supra* note 4, at 2. See 1988 Legal Services Action Plan, *supra* note 3, at 8.

³⁴ Under the LAB/LSC guidelines, "nearly half a million Maryland residents—including 141,000 children and over 50,000 individuals aged 65 and older—live[d] below the poverty threshold." 2006 Standing Pro Bono Committee Report, *supra* note 9, at 2.

³⁵ The LAB has higher standards in a limited number of exceptional cases, and it uses the MLSC standards in a small percentage of its MLSC-funded work.

³⁶ 1988 Legal Services Action Plan, *supra* note 3, at vi (Preface).

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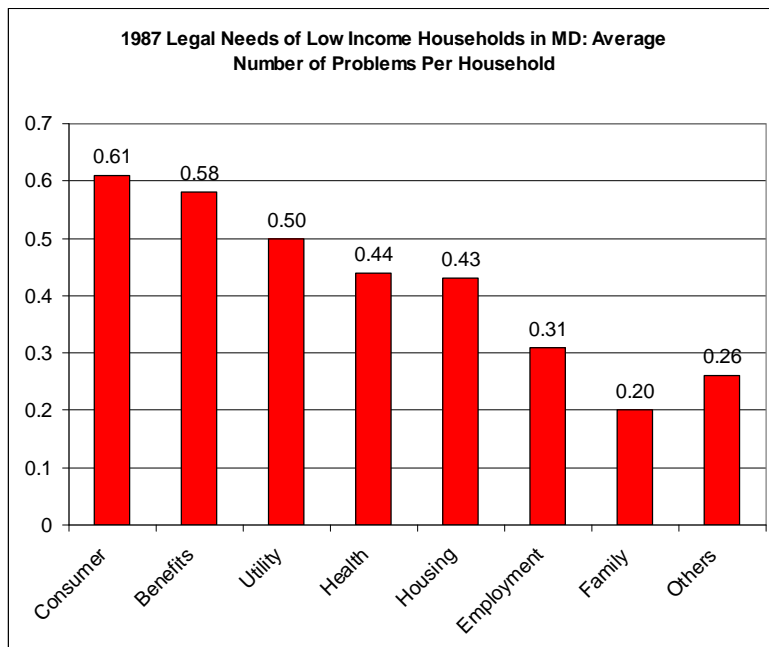
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members within the last year.”³⁷ The Council calculated that “[w]ith an estimated 400,000 income-eligible households statewide (1,067,455 eligible persons at 2.7 persons per household), this represents over 1,300,000 such problems experienced annually by Maryland’s low-income population.”³⁸ Chart 3 shows the prevalence of the various types of legal problems.

Chart 3*



* Data obtained from “Legal Needs of the Poor in Maryland: General Summary and Analysis” conducted for MD Legal Services Corporation 1987.

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The 1988 Cardin Commission Action Plan, and the many steps the Maryland legal community took to implement its recommendations, produced far reaching reforms, including legislation requiring attorneys to participate in the IOLTA program, substantial expansion of Maryland’s pro bono programs, and expansion of the clinical law programs in both state law schools.

1992: The Advisory Council on Family Legal Needs of Low Income People, chaired by former Attorney General J. Joseph Curran, Jr., concluded that “the percentage of low-income persons receiving” legal assistance in family law cases “is closer to eleven percent, and probably

³⁷ 1988 Legal Services Action Plan, *supra* note 3, at 11.

³⁸ *Id.* at 29.

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significantly below even this percentage.”³⁹ (The Council was comparing representation in family law cases with the “20% represented” conclusion of the Cardin Commission.) The 1992 Council based its conclusion on its comparison of the number of family law-related circuit court cases and the number of cases in which legal services programs provided assistance, general census data, the numbers of phone calls to family law hotlines, and the responses it received to a survey it conducted.⁴⁰ Even assuming that the Cardin Commission’s 20% represented figure was accurate, the Council concluded that approximately “102,000 low-income people will not have their domestic legal needs met by existing legal services.”⁴¹ The Council said: “These statistics appear fairly uniform statewide; no region stands out as significantly better or worse.”⁴²

The Council’s work helped to produce many important family law reforms, including the creation of Maryland’s “Family Court.”

1996: The Moderate Income Access to Justice Advisory Task Force, chaired by Herbert Garten, former President of the MLSC, commissioned a legal needs study in 1995.⁴³ The project’s restrictive definition of moderate income, \$15,000-\$45,000 for a household, meant that most of the respondents in the study qualified under the MLSC guidelines. The study found that households in this income range had an average of one legal problem in 1994.⁴⁴ Fewer than one in four households that had legal problems obtained counsel to help them resolve the problem.⁴⁵ The study found that the most prevalent legal problems for this group, in descending order, were: housing (15%), employment (11%), consumer (11%), and family/domestic (9%). Of these four areas, the fewest numbers of respondents obtained counsel in housing (0%) and consumer (27%) cases.⁴⁶

³⁹ 1992 Family Law Council Report, *supra* note 9, at 50.

⁴⁰ *Id.* at 50-51.

⁴¹ *Id.* at 49.

⁴² *Id.*

⁴³ 1996 Moderate Income Task Force Report, *supra* note 2. In 1994, the MSBA, the State's two law schools and MICPEL initiated The Moderate Income Access to Justice Project. The project partners appointed a Task Force to gather information and make recommendations, and commissioned a statewide legal needs study, performed by Mason-Dixon Political/Media Research, Inc. in 1995. *Id.* at 7-8.

⁴⁴ 1996 Moderate Income Task Force Report, *supra* note 2, at 8.

⁴⁵ *Id.*

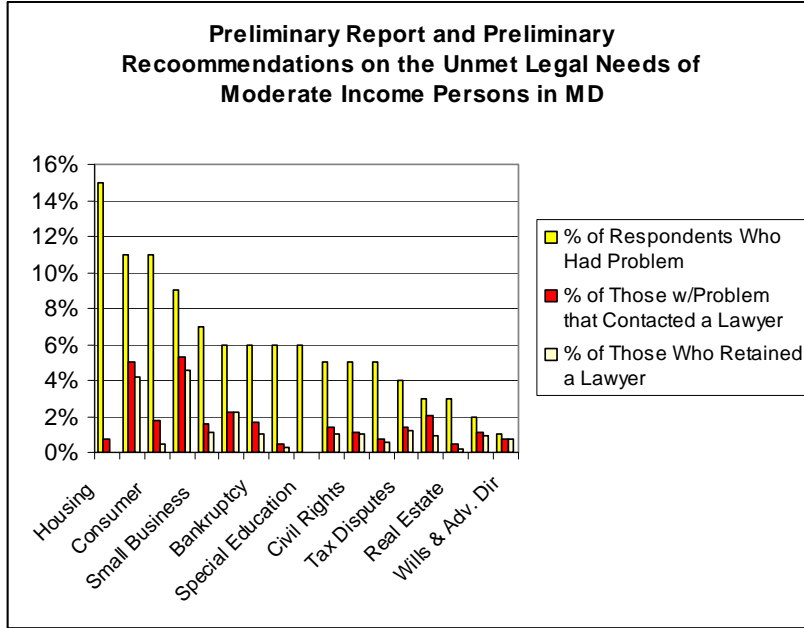
⁴⁶ *Id.* at 11.

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Chart 4*



* Data obtained from the “Maryland Moderate Income Access to Justice Advisory Taskforce Preliminary Report and Preliminary Recommendations on the Unmet Legal Needs of Moderate Income Persons in Maryland”

The Task Force’s proposals of a “Justice Resource Center” and “Small Firm Laboratory”⁴⁷ supported the creation and development of Civil Justice, Inc.

2000: The Maryland Judicial Commission on Pro Bono, chaired by Judge Deborah Byrnes, Maryland Court of Special Appeals, reviewed comprehensive legal needs data. It concluded that they “show that many of the State’s poor lack meaningful access to the civil justice system because they cannot afford to hire a lawyer.”⁴⁸ The Commission cited other data, e.g., the Legal Aid Bureau estimates that it “receives 60,000 to 65,000 calls for assistance annually,” but can not provide representation to 80% or more of these callers, and then “available” data on pro se litigation indicating that “approximately one-quarter of the [state’s] civil docket involves pro se litigants and that approximately one-half of the family law cases are

⁴⁷ *Id.*, at 2-3.

⁴⁸ 2000 Judicial Pro Bono Commission Report, *supra* note 4, at 1.

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filed pro se.”⁴⁹ The Commission said that the greatest unmet legal needs are in the area of family law, and described another legal needs study.

In 1997, the Services Priorities Workgroup of the Maryland Coalition for Civil Justice (MCCJ) contracted with Mason-Dixon Opinion Research, Inc. to determine the types of civil legal problems that members of the low-income community were experiencing...Potential clients canvassed in the survey ranked family law (85.5%), elder law (81.7%), housing/landlord-tenant (80.1%), and wills and advanced directives (79%) as their top four legal priorities....

These findings comport with a survey [of]...all circuit and district court judges in Maryland....By an overwhelming margin, the judges ranked family law as the number one area of priority. The judges ranked housing/landlord-tenant cases next, with guardianships a distant third.⁵⁰

Based on these data, the Commission recommended a series of steps to revitalize pro bono efforts throughout the state, many of which were implemented.⁵¹

2006: The Standing Committee of the Court of Appeals on Pro Bono Legal Service, chaired by Ward B. Coe, III, reviewed most of the prior legal needs studies and reports, as well as more recent data, and agreed with many of the prior unmet legal needs findings. It provided a staff attorney/potential client ratio that underscores the need to do more.

For the million or so Marylanders who are eligible for free legal services in Maryland, “[t]here are approximately two hundred attorneys who work for staffed legal services providers throughout Maryland. That translates to a ratio of approximately one (1) legal services attorney for every 5,000 poor Marylanders, while the overall ratio for the general population in Maryland is one (1) attorney for every 173 people.⁵²

⁴⁹ *Id.* at 3-4.

⁵⁰ 2000 Judicial Pro Bono Commission Report, *supra* note 4, at 4-5.

⁵¹ These included creation of a Standing Committee of the Court of Appeals on Pro Bono Legal Service (*see* Md. Rule 16-901), development and implementation of a State Pro Bono Plan (*see id.*), establishment of local pro bono committees and plans (*see* Md. Rule 16-902), and the substantial revision of Rule 6.1, Maryland Rules of Professional Conduct (e.g., to encourage lawyers annually to perform at least 50 hours of pro bono legal services and/or to make financial contributions to legal services organizations) (*see* revised Rule 6.1), and to require that lawyers annually report to the Court of Appeals the time they devote to pro bono service and their financial contributions to legal services providers (*see* Md. Rule 16-903).

⁵² 2006 Standing Pro Bono Committee Report, *supra* note 9, at 5. The Committee pointed out that in FY 2004, “[a]ll MLSC grantees combined served 109,419 clients.” *Id.* at 6. Because of limited resources, every legal services provider performs some form of legal triage to deal with the overload. For example, “beyond advice, information and referral,” the Legal Aid Bureau “limits its representation” in family law matters...to a narrow group of cases: custody issues where a child is at risk of abuse or neglect or where there is removal (threatened by lawsuit or

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It also asked local pro bono committees across the State to identify unmet legal needs.

**Chart 5: Legal Needs Identified by Local Maryland Pro Bono Committees:
By Ranking ***

Legal Need Area	Times ranked #1 Priority	Times ranked #2 Priority	Times ranked #3 Priority	Times ranked #4 Priority	Times ranked #5 Priority	Times ranked #6 Priority
Bankruptcy	0	3	2	0	4	0
Consumer	1	4	1	2	3	1
Education	0	0	1	1	0	1
Elder	1	1	2	0	1	0
Employment	0	0	0	2	0	1
Entitlement / benefits	0	2	3	1	3	0
Family	15	2	0	0	0	0
Health	0	0	0	3	1	0
Housing	2	7	7	1	0	0
Immigration naturalization	0	0	1	2	0	0
Wills / probate	0	0	1	2	1	0

*Data obtained from Standing Com. of the Ct. App. on Pro Bono Legal Service, State Action Plan and Report 12-34 (rev. 2006).⁵³

actual) of a child from a long-term custodian; spousal support where the household is not eligible for subsistence income; and cases involving the Uniform Child Custody Jurisdiction Act. Thus, many custody and most visitation matters and divorces, as well as guardianships, adoptions, child support, name changes and other domestic matters, do not fall under the guidelines.” Similarly, “[r]epresentation in housing cases is limited to priorities including: retaining public and subsidized housing, private breach of lease cases, mobile home evictions and substandard conditions. Advice and brief service is generally the only assistance Legal Aid can provide for a wide variety of other kinds of mistreatment by landlords.” *Id.*

⁵³ In this chart, Consumer legal needs include finance and debt collection (several counties considered Bankruptcy as part of Consumer – but those services were counted separately for this

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3. Unmet legal needs today in the family and housing cases

a. Relevant factors.

· *Quantitative rankings*: Housing ranks at or near the top in the quantitative rankings of unmet legal needs (numbers of poor people that have a housing problem). This is especially true when housing-related consumer problems, like home equity scams, are added to the “housing” category. Family law problems also rank in the top four or five of “prevalence” surveys.

· *Importance of interests at stake*: In both areas, there often are vitally important interests at stake, e.g., the custody of children and prevention of serious abuse in family cases, and the loss of a home in housing cases.

· *Extent of representation in practice area*: Although there is a substantial family law bar, there are many domestic cases, especially involving contested custody, in which many indigent litigants still are unable to obtain representation. There are very few lawyers who represent the poor in housing litigation, although there are sources of legal information and limited advice.

· *Need for counsel in contested litigation*: In both practice areas, there can be complex legal and factual issues that when litigated, require the guiding hand of counsel, e.g., child custody and third-party caretaker issues in family law, and issues arising out of foreclosure actions in housing law. In addition, in both cases when there are substantial interests at stake, often pro se litigants face represented parties.

b. Family cases

A number of State legal services programs provide family law-related legal services, including MVLS, LAB, and a number of smaller MLSC grantees.⁵⁴ There are real limits, however, particularly in contested cases. The LAB, for example, has a restrictive set of family case priority criteria, imposed to deal with the reality of far too many potential clients for the

tabulation), Education legal needs include students with disabilities; Entitlement/benefits legal needs include SSI/SSDI, Medicaid/Medicare, food stamps, and disability; Family legal needs include custody, child support, divorce/support, domestic violence, guardianship, separation, and visitation; Health legal needs include medical directives, powers of attorney, and insurance claims, and Housing legal needs include landlord/tenant and public/subsidized housing. 2006 Standing Pro Bono Committee Report, *supra* note 9.

⁵⁴ The State’s law schools have family law-related clinical programs as well, especially the University of Baltimore School of Law, which offers a Family Law Clinic and Family Mediation Clinic, and has a Center for Families, Children, and the Courts.

limited number of legal aid lawyers. It also often is impossible to place contested family cases, especially protracted ones, with volunteer lawyers.

There is virtually a consensus that family law is one of the most important areas of unmet legal need. Again, circuit and district court judges in Maryland, “by an overwhelming margin . . . ranked family law as the number one area of [pro bono] priority.”⁵⁵

Legal needs reports have reached the same conclusion. The 2000 Legal Services Delivery System Evaluation concluded that “[s]ome significant substantive matters of great import to the low income community are not being addressed sufficiently.”⁵⁶ The Evaluation identified several “substantive areas in which the amount of resources are significantly inadequate to the demand, or in which there is little work being done at all.”⁵⁷ These included contested child custody. The Evaluation said:

The largest gap in services about which there is universal agreement involves contested child custody cases. Because the cases are contested, involve children, and are often extremely emotional, they are particularly challenging to the advocates who take them on. The cases are universally reported to be difficult to refer to volunteer lawyers, who fear the open ended commitment of time to a case which can be emotionally and financially draining. While the Bureau has increased the number of staff lawyers who handle child custody matters, the demand for such cases still far exceeds available resources.”⁵⁸

Since 2000, the AOC and MLSC have created and funded the Contested Custody Representation Project, and this has helped to narrow the gap.⁵⁹ The Project is triaging the cases now, however, with only a subset of all contested custody cases eligible for services (see Part IV), and there are more eligible cases than the project can handle.⁶⁰

The 2000 Legal Services Delivery System Evaluation also concluded: “While contested

⁵⁵ 2000 Judicial Pro Bono Commission Report, *supra* note 4, at 4-5.

⁵⁶ 2000 Legal Services Delivery System Evaluation, *supra* note 24, at 2.

⁵⁷ *Id.* at 23.

⁵⁸ The Evaluation added: “The solution to the contested child custody problem in the state necessarily must involve the courts in the development of creative approaches to how such matters are handled.” One recommendation was that lawyers be allowed and encouraged to “[u]nbundle” the representation, so that the lawyer can appear as a representative in an adversarial proceeding only at certain steps in the process.” 2000 Legal Services Delivery System Evaluation, *supra* note 24, at 24.

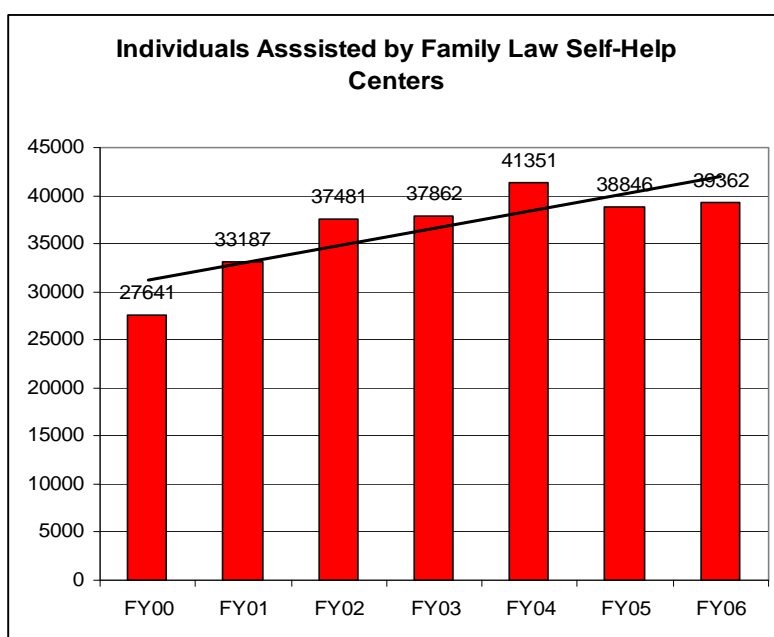
⁵⁹ *See* Part IV.

⁶⁰ The Contested Custody Representation Project accepted 619 cases in FY 2006. *See* Part IV. In FY 2006, by comparison, pro se litigants brought over 10,000 custody cases to self-help centers. FY 2006 AOC Fam. Ad. Report, at 35.

custody matters are clearly the greatest challenge to the resources in the state, other family law matters continue to demand significant resources. Again, the reforms instituted by the court, in particular, have made a significant impact in this challenging area. Contested matters, however, continue to constitute a significant unmet need.”⁶¹

The unmet legal need in the area of family law is also demonstrated by the large numbers of pro se litigants in domestic cases. There now are self-help centers in every jurisdiction in Maryland. “These free walk-in legal clinics provide forms, information and procedural assistance to self-represented persons.” ⁶² In FY 2006, family law self-help centers served 39,362 individuals.⁶³ The prevalent types of cases that the pro se litigants brought to the self-help centers were “divorce”: 11,557, and “custody”: 10, 050.⁶⁴ Chart 6 contains data for seven years.

Chart 6*



* Data obtained from Annual Report of the Maryland Circuit Court Family Divisions and Family Services Program FY 2006

⁶¹ 2000 Legal Services Delivery System Evaluation, *supra* note 24, at 24.

⁶² FY 2006 AOC Fam. Ad. Report, at 11.

⁶³ *Id.*

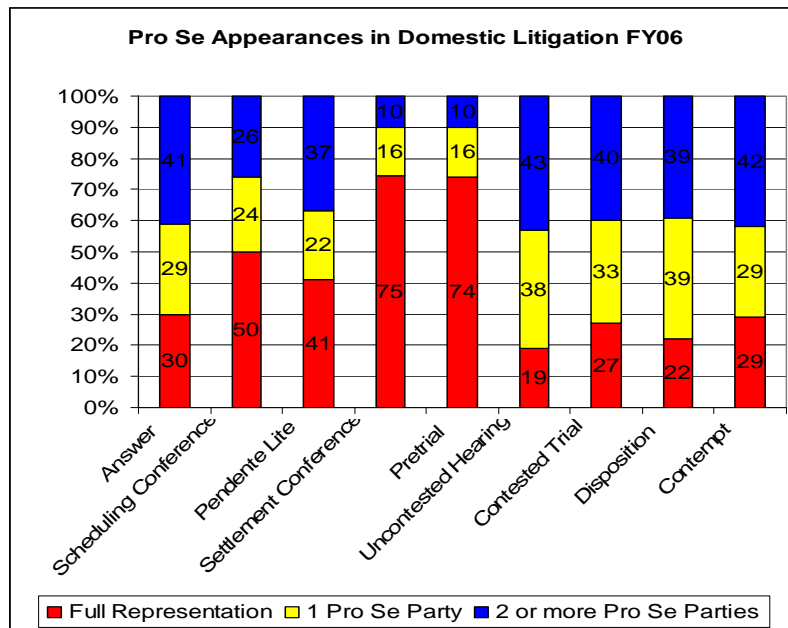
⁶⁴ FY 2006 AOC Fam. Ad. Report, at 35. The next three types of cases by prevalence were: “child support non IV-D” (“IV-D refers to a provision of the Social Security Act); 3,967; “child support IVD”: 2,351; and “visitation”: 2,252. *Id.*

The AOC concludes generally: “The level of self-representation can vary greatly by jurisdiction. In [FY 2006, in] the Circuit Court for Baltimore City, 85% of all cases involved at least one self-represented litigant at the time the Answer was filed, as opposed to 70% statewide.”⁶⁵ The AOC breaks down the pro se data by stage of the proceeding. It says:

In order to get a true picture of the impact of self- representation on the family justice system, the Judiciary looks at *pro se* appearances at a variety of stages of litigation. A court case is not a single, finite event but a series of events that happen over time. Individuals may begin their court case believing they can handle the case themselves but may end up engaging an attorney once it becomes clear that the case is contested or a trial is pending. In other instances, individuals may run out of funds before the case is over and be compelled to discharge their attorney. Data is collected through the Judiciary's information system to track the number of domestic cases that involve one or more self-represented persons at various stages.⁶⁶

The following chart shows the extent of representation throughout this process.

Chart 7*



*Data obtained from the Annual Report of the Maryland Circuit Court Family Divisions and Family Services Program FY 2006

⁶⁵ *Id.* at 37.

⁶⁶ FY 2006 AOC Fam. Ad. Report, at 37.

In sum, in 2006, at the “pretrial” and “settlement conference” stages, both parties had counsel in 74% (pretrial) and 75% (settlement conference) of the cases, and in an additional 16% of the cases (at both stages), one of the parties had counsel and the other did not. This means there was at least one lawyer in at least 90% of the cases at these two stages.⁶⁷

By comparison, at an earlier stage, when the answer was filed, both parties were represented in only 30% of the cases, and one party only had counsel in an additional 29% of the cases. Thus, both parties were pro se in 41% of the cases.⁶⁸

Nearer the other end of the process, when trials were held in contested cases, both parties were represented in only 27% of the cases, and one party only had counsel in an additional 33% of the cases. Thus, both parties were pro se in 40% of the cases.⁶⁹

The AOC offered some descriptions of the pro se litigants. In overview, it said:

While the Judiciary's information system does not currently permit courts to capture demographics of self-represented litigants, we can get some sense of who is appearing without benefit of counsel by looking at the demographics for Maryland's Family Law Self-Help Centers. Individuals who request assistance from these programs are asked to complete a one-page demographic questionnaire. While there are local variations, the typical self-represented litigant is an African -American female with a high school education and a household income of under \$15,000 per year.⁷⁰

In a 2004 evaluation of five of Maryland's self-help projects, John Greacen distinguishes among “simple uncontested cases,” which “can be handled by self represented litigants who are given basic forms, instructions and information,” and “moderately complex matters, including contested issues,” which “can be handled by sophisticated self represented litigants who are given basic forms, instructions and information,” but not by “unsophisticated litigants.” Lawyers should be involved in these cases and in “highly complex matters.”⁷¹ Greachen describes the limits of Maryland's self-help materials and services:

Maryland courts provide litigants with the forms required to initiate and defend all manner of family law matters....For the most part, they do not provide the information needed by a self represented litigant to pursue a contested matter to its conclusion--such as information on the elements of the relief a party seeks, the

⁶⁷ *Id.* (Figure 29).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Self-Assisted Litigant Report, *supra* note 12, at 19.

types of evidence that could be used to establish each element, and the processes involved in presenting evidence in court. The Peoples Law Library includes thorough discussions of the law applicable to domestic relations and many other types of cases....[but] the Peoples Law Library materials are designed to explain the basic legal concepts, but not the details of trial preparation—finding and subpoenaing witnesses, analyzing what each witness or exhibit will be able to establish for the judge and how the contribution of each relates to the criteria the judge will use in making a decision.⁷²

Finally, in its 2006 Report, the Standing Committee of the Court of Appeals on Pro Bono Legal Service provided the legal needs assessments of local pro bono committees around the State. Chart 5, which aggregates these responses, shows that unmet needs in family law cases are ranked first, with housing needs ranked second, but substantially behind.

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c. Housing cases

In 2006, the local pro bono committees around the State ranked housing as the second pro bono priority. See Chart 5. Similarly, in the 2000 survey of trial judges, the judges “ranked housing/landlord-tenant cases” as the second unmet legal need, with the next choice, guardianships, “a distant third.”⁷³ The other legal needs studies and reports give similar high rankings to unmet legal need in the housing area, e.g., ranking it first (1996 Moderate Income Task Force Report, Chart 4), and fifth (1988 Legal Services Action Plan, Chart 3).

Given the important interests at stake (loss of a home or rented residence), and the limited numbers of lawyers who are available to represent indigents in housing litigation, including in landlord-tenant cases, foreclosure actions, and consumer cases involving homes (second-mortgage and refinancing scams, for instance), there is an obvious need to provide more lawyers and paralegals to pro se litigants in selected housing cases.

4. The unmet need for discrete task representation

In many types of contested cases, particularly when the opposing party is represented, litigants need “full-service” representation. In some cases, however, some form of “discrete task” representation can be adequate. In his Pro Se Project Evaluation, John Greacen made this point. He said that “many domestic litigants need legal advice and representation that most pro se assistance projects do not provide.” For these litigants, “courts should make it possible for litigants to obtain legal advice,” and can do so through “attorneys who are not members of the

⁷² *Id.* at 20.

⁷³ 2000 Judicial Pro Bono Commission Report, *supra* note 4, at 4-5.

court staff – on a contract basis, a volunteer basis, or a compensated basis through unbundled legal services.”⁷⁴ In the latter respect, Greacen said:

If unbundled services were formally recognized in Maryland, and if every court maintained a roster of attorneys willing to provide legal advice on this basis--that is, through a half hour or hour consultation to provide strategic guidance, Maryland courts could provide the legal advice component of a full service system through this means...Maryland might wish to experiment with a court-funded unbundled services legal advice program in a large court...[T]he court could pay attorneys to provide legal advice at a set fee per client. If the bar or bench were to insist on means testing for such a service, persons who did not qualify could obtain the same service at the same fee by paying the attorney directly.⁷⁵

Discrete-task representation could augment the services of the self-help centers by providing litigants with the next increments of legal services, e.g., legal advice (where the center does not provide it), or more extensive legal advice (where the program does provide some, but only limited advice); “coaching” before and after a mediation session; representation in negotiating a separation agreement; and limited representation at a trial.

In his recommendations, Greacen said:

[Courts] could recruit attorneys willing to provide advice and brief services on an unbundled basis (if unbundled services are authorized by the Court of Appeals). These services could be paid for or subsidized by the court, or the court might conclude that the terms by which unbundled services are offered by the private bar are sufficiently affordable that they are reasonably available to all litigants as a commercial service; the model for this is the Montgomery County facilitator program. There attorneys are paid \$75 per client to provide settlement facilitation upon referral by a master following a scheduling conference. The court could prepare or approve a limited representation agreement that all clients would sign before receiving legal advice services.⁷⁶

IV. REDUCED FEE AND JUDICARE PROGRAMS

⁷⁴ Self-Assisted Litigant Report, *supra* note 12, at 26.

⁷⁵ Self-Assisted Litigant Report, *supra* note 12, at 31.

⁷⁶ *Id.* The “Ideal Model” program “for Maryland,” which Greacen proposed, includes a “Statewide unbundled legal advice network,” which would operate an “800 number with credit card billing that connects a caller to a lawyer willing to provide advice and brief services over the phone for a fixed fee.” *Id.* at 33.

There are examples of judicare and reduced-fee legal services programs that serve the poor in Maryland, in other states, and in other countries. In this part, I describe and evaluate some of these programs.

A. Maryland

1. Maryland's Judicare Program

a. Judicare from 1971-81

The Maryland Legal Services Program ("MLSP") is a sub-agency of the State Department of Human Resources.⁷⁷ Beginning in 1971, it administered the State's Judicare program.⁷⁸ Judicare began with federal funding under Title 20 of the Social Security Act. The Department of Human Resources "delegated the responsibility for the overall operation of the program to the Director" of the MLSP.⁷⁹

Initially, Judicare operated Statewide, with the exception of Baltimore City. In the city, the Legal Aid Bureau provided representation to Judicare-eligible clients pursuant to a contract with DHR.⁸⁰ Although the LAB then was focused in Baltimore City, it was rapidly expanding and providing legal services in Anne Arundel, Carroll, Harford, and Howard counties.

The Judicare regulations sorted the state's 24 jurisdictions into three categories: 1) In Baltimore City, the LAB did the intake interviews and provided the services. 2) In any county in which the LAB did not have an office, the local department of social services "determine[d] eligibility," and gave eligible clients "a list of participating attorneys from which the client [could] select the attorney of his choice." 3) In any county (other than Baltimore City) in which

⁷⁷ It now is in the Community Services Administration. Originally, it was in the Social Services Administration.

⁷⁸ January 26, 2007 Interview with John Michener, Director of the Maryland Legal Services Program (MLSP) from 1979-1990 ("Michener Interview"). *See also* letter of July 10, 2006 from Mr. Michener to Susan Erlichman, Executive Director, MLSC. Mr. Michener recalled that the MLSP also reimbursed legal expenses for civil legal services provided by court order, provided in CINA cases, or provided by the Office of the Public Defender.

⁷⁹ COMAR, § 07.02.19.03 (1976) (All of the Judicare-related COMAR regulations are in Appendix 8).

⁸⁰ COMAR, § 07.02.19.06 (1976); John Michener, *The Pro Bono Program in Maryland: The Prototype for Interlocking Pluralism*, 17 MD. BAR J. 7 (1984) ("Michener, Pro Bono Program in Md., 17 MD. BAR J".)

the LAB had an office, an applicant could choose to seek services either from the LAB or, through the local DSS financial eligibility process, from a Judicare attorney.⁸¹

Judicare largely was administered with a “Judicare Case Packet,” comprised of an original (“Control Copy”) and six carbon copies.⁸² The instructions in the Packet and the governing regulations set out the following process:

The local DSS completed Part A of the form (“Eligibility”) after establishing income eligibility. The intake interviewer would “mail the Control Copy [original] to the Director, MLSP, and give the rest of the Case packet to the Judicare eligible to take to an attorney.”⁸³ As noted above, the intake interviewer would also give the person a list of Judicare lawyers, which, according to the regulations, the local DSS obtained from “the local bar association.”⁸⁴ *The important point here is that the packet served as a voucher, authorizing the client to choose a lawyer from any member of the Maryland bar who would take Judicare cases.*

In an “initial conference,” the Judicare attorney either provided the full service required (e.g., advice) or decided that further services were necessary. The regulations said: “If the attorney makes the determination at the initial interview that the client is in need of further legal services, he shall forward the contract to the Director and may proceed with the case unless the Director notifies him within 7 working days of a disapproval. In the case of an appeal, the attorney shall obtain the approval of the Director before filing.”⁸⁵ In practice, and subject to the fee limits, *Judicare delegated to the lawyer the key decisions, e.g., whether the client had a*

⁸¹ COMAR, § 07.02.19.06 (1976). In Baltimore City, if the LAB had a conflict of interest because it already was representing one party, the other party, if eligible, was entitled to seek assistance from a Judicare lawyer. *Id.* at § 07.02.19.07. COMAR, § 07.02.19.05 (1976) made applicable to Judicare the financial eligibility guidelines in COMAR 07.02.16.05B, which governed eligibility for social services.

⁸² See Appendix 2. The six copies were “Agreement,” “Payment,” “Statistical,” “Attorney’s,” “Approving Authority’s,” and “Local Department’s” copies.

⁸³ Judicare Case Packet, Part A instructions (back) (“Form Instructions”), Appendix 2.

⁸⁴ COMAR, § 07.02.19.03 (1976).

⁸⁵ COMAR, § 07.02.19.07(B) (2) (1976). The attorney then filled out Part B of the form (the form says “within seven (7) days of the initial conference”), and “mail[ed] the Agreement Copy [first copy] to the Director, MLSP, retaining the rest of the Case Packet.” Form Instructions, Part B, Appendix 2. In Part B, the attorney indicated whether “further services [were] to be rendered,” the type of legal problem (with a “Problem code”), and the “Nature of the legal problem.” Judicare Case Packet, Part B-Agreement (front) (“Form Information”), Appendix 2.

*meritorious claim or defense, whether additional services were necessary to vindicate it, and what those services should be.*⁸⁶

The range of matters covered by the program was exceedingly broad, including virtually every civil legal problem a low-income person might have. The codes covered the following legal problems: “*consumer/finance*” (“bankruptcy, collection--inc. repossession, deficiency, and garnishment”); “*contracts/warranties*”; “*education*”; “*employment*” (“wage claims” and other issues); “*family*” (“adoption, child support/guardianship/ visitation (non CINA/CINS), CINA, CINS, divorce/separation/annulment, guardianship/conservatorship, paternity, support, other family”); “*health*” (“Medicaid, Medicare, other health”); “*income maintenance*” (“AFDC/other welfare, food stamps/commodities, Social Security, Supplemental Security Income (SSI), unemployment compensation, veteran’s benefits, workmen’s compensation, other income maintenance”); “*miscellaneous*” (“torts, wills/estates, other”); and “*appeals*” (“to administrative law judge, to administrative appeals court, from agency to court, from lower court to higher court, other appeal.”)⁸⁷ The regulations excluded from Judicare coverage only: “(1) fee-generating cases; [and] (2) cases in which the state already has an obligation to provide services, such as criminal and certain juvenile matters, such as delinquency.”⁸⁸

When the lawyer “completed” the promised “legal services” identified in the form, the lawyer completed Part C of the form and mailed the remainder of the Case Packet either to the “local approving authority,” if the fee was \$500 or less, or to the “Director, MLSP,” if the fee exceeded \$500.⁸⁹ In Part C, the lawyer entered a “Disposition code,” selecting one of the following: 1) Matter dropped because client failed to return, did not cooperate, or otherwise displayed lack of interest; 2) Matter dropped because client could not afford necessary expenses; 3) Client-attorney relationship terminated before matter was resolved; 4) Matter resolved by advice or other brief service; 5) Matter resolved through legal research and/or preparation of legal documents (will, contract, etc.); 6) Matter resolved through negotiation; 7) Matter resolved through hearing or trial; and 8) Other.⁹⁰

⁸⁶ Michener Interview, *supra* note 78.

⁸⁷ Form Instructions, “Legal Problem Codes,” Appendix 2.

⁸⁸ COMAR, § 07.02.19.04(B) (1976).

⁸⁹ Form Instructions, Part C, Appendix 2.

⁹⁰ Form Information, Part C-Billing, Appendix 2.

The Judicare form also required the lawyer to indicate the numbers of, and time spent on, “pleadings,” “court appearances,” “client conferences,” and “other conferences;” whether there was an issue in the case that was “contested” and “tried before a judge or master;” whether “briefs” were “submitted;” whether there were “any unusual legal problems” in the case; and the names of the “opposing party” and “opposing counsel.”⁹¹

For legal bills of \$500 or less, the “local approving authority” was a judge (often) or lawyer appointed by the local bar association.⁹² The Director of the MLSP submitted bills over \$500 to a Statewide “Judicare Committee” of the Maryland State Bar Association, which still exists today.⁹³ The reviews largely were conducted on the basis of the submitted forms, with the reviewers making rough judgments about whether the services identified by the lawyer warranted the requested fee, and whether the services were within the scopes of the Judicare Program and the attorney-client contract and were consistent with the Program’s hourly rates and fee schedules.

After the initial conference, for which lawyers were paid \$5.00, the lawyers’ fees were set in two ways: 1) an hourly rate of \$25, up to a \$500 “maximum fee,” which the regulations said could be “waived only upon a showing of good cause, and only on a case-by-case basis;”⁹⁴ and 2) a schedule of maximum fees for particular types of cases, e.g., \$250 for uncontested, and \$500 for contested divorce and custody cases. Again, the fee limits for contested cases could be waived. Thus, an attorney would bill at \$25 an hour up to the case or schedule maximum, unless the attorney could obtain a waiver of the maximum. Mr. Michener recalls that the fee schedule was the one that the State Bar Association then used, before judicial decisions invalidated such schedules, so there was parity between the fees paid to Judicare attorneys and fees private

⁹¹ *Id.*

⁹² Michener Interview, *supra* note 78.

⁹³ At the request of the DHR Maryland Legal Services Program, the committee reviews attorney fee requests in excess of \$500 from lawyers who have represented clients in adult protective services guardianship hearings and adult public guardian review board hearings, as part of the MLSP’s Court Appointed Attorney Program. Interview with Delores E. Edwards, Director of MLSP. DHR also pays court-appointed lawyers in CINA cases at a rate of \$75 an hour. These lawyers are appointed when a DHR CINA Contractor is not available to provide the representation.

⁹⁴ COMAR, § 07.02.19.08(B) (1976); Michener, *Pro Bono Program in Md.*, 17 MD. BAR J., *supra* note 80, at 3.

lawyers customarily charged non-Judicare clients.⁹⁵ There was a \$5,000 per year cap, subject to waiver, on the amount of fees a lawyer could earn.⁹⁶

In reviewing the submitted bills, the reviewers could pay the full amount requested or a lesser amount, or reject the request entirely. The reviewers made a “payment recommendation” to the Director of the MLSP, which he then approved in full or part, or rejected.⁹⁷ Mr. Michener said he invariably approved the recommendations of the committees. Judicare also paid some court costs of Judicare cases.⁹⁸

When Mr. Michener assumed control of the Judicare Program in 1980, it was substantially over budget.⁹⁹ In FY 1981, Judicare-funded attorneys “handled 10,000 cases at a cost of \$2,500,000.”¹⁰⁰ Mr. Michener said:

“From its inception in 1971 the Judicare program had grown at an accelerating rate. In FY 1980, 16,093 new Judicare contracts were issued and 11,303 contracts were paid and closed. Total payments amounted to \$2,485,668, far in excess of the appropriation of \$1,116,375. In the previous fiscal year, 1979, expenditures were more than three times the appropriation.¹⁰¹

In 1980, the Judicare regulations were revised to exclude from coverage “uncontested divorces not involving children,”¹⁰² and to preclude the payment from Judicare funds of court costs.¹⁰³

After 1981, the State drastically reduced funding for Judicare, and at the end of 1990, stopped funding it entirely. During 1991 and 1992, the Maryland Legal Services Corporation provided stop-gap funding, but when the State declined to reassume the funding responsibility, Judicare was ended. This history is related next.

b. Contraction and then elimination of Judicare

⁹⁵ Michener Interview, *supra* note 78.

⁹⁶ COMAR, § 07.02.19.08(C) (1976);

⁹⁷ Michener Interview, *supra* note 78. See Form information, Parts D and E, Appendix 2.

⁹⁸ COMAR, § 07.02.19.08(D) (1976)

⁹⁹ *The Judicare Management Information System*, John Michener (1982) (unpublished paper), at 1.

¹⁰⁰ Michener, *Pro Bono Program in Md.*, 17 MD. BAR J., *supra* note 80, at 1.

¹⁰¹ *The Judicare Management Information System*, John Michener (1982), (unpublished paper), at 1.

¹⁰² COMAR, § 07.02.19.04(B) (3) (1980).

¹⁰³ COMAR, § 07.02.19.08 (1980).

In 1981 and 1982, the DHR published proposed revisions in the Judicare regulations that would have made a number of changes, including limiting the types of covered cases, but these regulations were withdrawn or not adopted.¹⁰⁴

Mr. Michener describes what happened to the Judicare Program after that:

During 1982 and 1983, with cutbacks in federal and State legal service funding, Judicare spending was cut to \$1,000,000 and transferred exclusively to State general funds. Shortly thereafter the Department voluntarily asked for and received permission from the governor and legislative leaders to make a mid-year transfer of three-fourths of the Judicare appropriation, or \$750,000, from Judicare to the Legal Aid Bureau, a private organization, to help the Bureau meet the impact of LSC cuts. (A small portion of the transferred money did not go to the Legal Aid Bureau but went instead to the Maryland Disability Law Center to help that organization provide legal services to disabled individuals.) To maximize the impact of its remaining funds, Judicare restricted issuance of its case packets (vouchers) to rural counties without a Legal Aid office.¹⁰⁵

Judicare never recovered from this transfer of funds, made to respond to then President Reagan’s threat to eliminate entirely the national Legal Services Corporation and its budget. By the mid-1980s, Judicare’s budget was a small percentage of what it once had been, and by 1988, the program was “restricted to the twelve rural counties without Legal Aid Bureau offices.”¹⁰⁶ Although the original Judicare records have been destroyed, the following chart, which is a composite of information in MLSC documents and the 1992 Family Law Council report, level of funding and numbers of cases during the 1980s:

Chart 8*

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FY	FUNDING	SOURCE	CASES SERVED
1981	\$2,800,000	Title 20 funds	10,000
1985	\$250,000	State	figure unavailable
1987	\$290,659	State	1,363
1988	\$297,926	State	1,405
1989	\$522,822	State	2,271
1990	\$543,735	State	2,319 ¹⁰⁷

*Data obtained from MLSC records and *Increasing Access to Justice for Maryland’s Families, Advisory Council on Family Legal Needs of Low Income People: A Joint Project of the Maryland Legal Services Corporation and the University of Baltimore School of Law* (1992)

¹⁰⁴ See Appendix 8.

¹⁰⁵ Michener, *Pro Bono Program in Md.*, 17 MD. BAR J., *supra* note 80, at 1.

¹⁰⁶ 1988 Legal Services Action Plan, *supra* note 3, at 16.

¹⁰⁷ Information from 1992 Family Law Council Report, *supra* note 39, at 58, and June 10, 1991 memorandum to the MLSC Board of Directors from Robert Rhudy, Executive Director.

In a June 10, 1991 memorandum to the MLSC Board of Directors, Robert Rhudy, Executive Director, recommended that “MLSC allocate \$500,000 in FY 1992 to maintenance of the Judicare program in the face of current State deficits.” He noted that the Judicare expansion in 1989 by Governor Schaefer (see above chart) was “in response to recommendations of the” 1988 Action Plan proposed by the Cardin Commission. But, he said: “No new attorney-client Judicare packets have been accepted in 1991...as Judicare funding was reallocated by DHR in the face of the public deficit to fund mandated programs.” Mr. Rhudy endorsed the program, saying: “I have reviewed and sampled the services provided by Judicare during FY 1990, and find that it appears to be a very cost effective program for the provision of civil legal assistance to indigents in rural areas, particularly in basic family and domestic cases which are a current MLSC priority.” To support the funding request, Mr. Rhudy “sampled” the Judicare cases to determine the predominant case type, and found that “approximately 92% of Judicare case services are for family/domestic complaints, of which over 50% are resolved by divorce decrees at an average cost of approximately \$250. The remaining 7% of cases sampled involved bankruptcy, landlord/tenant disputes, wills, insurance claims, and other civil needs.”

Mr. Rhudy said that he had talked with DHR administrators, who understood “that MLSC funding for Judicare for FY 1992 would be on an emergency basis, with a hope that the State of Maryland resumes funding for the program as the State's financial conditions improve.” Mr. Rhudy also said that in light of the MLSC legislation, which “only permits MLSC to provide funding for legal services by grants to nonprofit organizations,” he recommended that the Maryland Volunteer Lawyers Service (MVLS) administer the MLSC grant, “which would primarily involve writing the checks to participating Judicare attorneys upon certification of service by DHR's Legal Services Program staff. If approved, MVLS's administrative expense for its limited service would be paid from the proposed \$500,000.”¹⁰⁸

The MSLC FY 1991 Annual Report related that the Board had approved the requested grant.

As of June 30, 1991, MLSC approved a one-year grant of \$560,000 to the Maryland Volunteer Lawyers Service for the Judicare program. Judicare

¹⁰⁸ June 10, 1991 memorandum to the MLSC Board of Directors from Robert Rhudy, Executive Director.

reimburses private attorneys at \$30/hr to provide civil legal assistance to indigent persons in the twelve Maryland counties which do not have a Legal Aid Bureau office (Calvert, Caroline, Carroll, Cecil, Dorchester, Garrett, Kent, St. Mary's, Somerset, Talbot, Washington, and Worcester counties), and serves over 2,000 persons annually primarily with family and domestic legal problems....[S]tate funding was eliminated during fiscal year 1991.

The MLSC FY 1992 Report related that the MLSC had extended the Judicare grant for another year, and that it had funded a substantial amount of legal work:

During FY 1992, MLSC provided a one-year grant to judicare...MLSC witnessed a dramatic increase in services to poor persons in rural and traditionally underserved areas of the state during the FY 1992 period, largely as a result of the Judicare program. The Eastern Shore, Western Maryland, and Southern Maryland had increases in MLSC-funded legal services over the prior year of 44%, 55%, and 67%, respectively. Judicare was operational in the twelve Maryland counties which do not have a Legal Aid Bureau office (Calvert, Caroline, Carroll, Cecil, Dorchester, Garrett, Kent, St. Mary's, Somerset, Talbot, Washington, and Worcester counties), and served 2,261 persons during the FY 1992 period, primarily with family and domestic legal problems.

The State did not reassume funding Judicare in FY 1993, and the MLSC did not continue its stopgap funding. Accordingly, the program ended. The story of Maryland's Judicare program, however, is not complete without describing a pro bono hybrid of Judicare that John Michener and the DHR MLSP developed in 1984.

c. The Judicare Supplementation Program: A hybrid

In 1984, John Michener was Director of both the MLSP and the Maryland Volunteer Lawyers Service (MVLS), which had been created in 1981.¹⁰⁹ That year, at his direction, the MSLP created the "Judicare Supplementation Program." This creative program sought to encourage private attorneys to take pro bono cases by paying lawyers at the rate of \$30 an hour for time expended in excess of 20 hours of pro bono time.¹¹⁰ That is, the first 20 hours were free, while additional hours were compensated. The goal was to "protect" lawyers who took on pro bono cases that turned out to be protracted, and thereby threatened to undermine their

¹⁰⁹ In Opinion No. 88-24, the State Ethics Commission found that the arrangement did not violate any State ethics rule.

¹¹⁰ Michener Interview, *supra* note 78. See 1990 nomination of program for "Innovations" award, given by The Council of State Governments. See also COMAR 07.02.05.09.1, et seq. (1984) (Appendix 8).

practices.¹¹¹ Any case referred by a “qualified pro bono program” qualified for a supplemental payment under the DHR program once the lawyer had spent 20 hours on the representation.¹¹²

“[T]he normal Judicare [case] caps [were] waived and payment [was] made for the full amount of time necessary to complete the case.”¹¹³ Fee-review procedures for Judicare applied to these fees as well.¹¹⁴ In addition, if it was consistent with the referring pro bono program’s rules, an attorney could charge a fee to the client “from money or assets obtained for the client through the attorney’s efforts,” or “awarded by the court against the client.” In those instances, the attorney had to return any payment made by the Pro Bono Supplementation Program, although the attorney could keep that part of the fee that exceeded the PBSP payment.¹¹⁵

The scope of this program was broad. It covered “all civil legal services, including representation in court,” in qualified pro bono cases, “[s]ubject to the availability of funds.”¹¹⁶ “[A]ny attorney admitted to the practice of law in Maryland” could take advantage of the

¹¹¹ Mr. Michener says: “The Supplementation Program was designed to encourage attorneys to take pro bono cases by removing the danger that a seemingly simple case could mushroom into a time-engulfing, unpaid, practice-breaking case. To date it has succeeded admirably in encouraging pro bono work.” Michener, *Pro Bono Program in Md.*, 17 MD. BAR J., *supra* note 80, at 3.

¹¹² Nomination of program for “Innovations” award, given by The Council of State Governments. Writing when the program was still effective, Mr. Michener said: “To qualify, a program must be bar-sponsored, must have adopted the LSC financial eligibility guidelines, and must agree to extend reciprocity to other qualified pro bono programs. This latter requirement means that if a program requires a participating attorney to handle a specified number of pro bono cases, the program must allow the attorney to count toward that requirement any pro bono cases of the required type the attorney has accepted from any other qualified pro bono program. This reciprocity provision is designed to encourage cooperation among the pro bono programs and to avoid interprogram conflicts since many attorneys in Maryland belong to more than one bar association.” Michener, *Pro Bono Program in Md.*, 17 MD. BAR J., *supra* note 80, at 3. He added: “Based on the extremely favorable experience to date, the Maryland Legal Services Program is now in the process of amending the Supplementation Program regulations to extend its coverage to pro bono programs in the House of Ruth and other similar nonprofit organizations that receive IOLTA funds.” *Id.* at 4.

¹¹³ *Id.* at 3.

¹¹⁴ *Id.*

¹¹⁵ COMAR 07.02.05.09.1(H) (3) (a) (i-ii).

¹¹⁶ COMAR 07.02.05.09.1 (C).

program.¹¹⁷ The financial eligibility guidelines that this program used were those of the LAB, providing uniform financial eligibility guidelines for indigent legal services across the State.¹¹⁸

In FY 1989, the program paid \$17,594.50 in 21 cases, and encouraged many other lawyers to take pro bono cases by reassuring them that if the case required substantially more time than they had anticipated, they could receive some compensation for that additional time.¹¹⁹

Later, the program became known as the “Judicare Pro Bono Safety Net Program,” until it was discontinued with the Judicare program.

d. The Maryland Judicare programs: an assessment

In 1981, indigent legal services in Maryland were primarily provided by two organizations: the Legal Aid Bureau, with a budget of approximately \$6,300,000,¹²⁰ and Judicare, with a budget of approximately \$2,500,000.

In 1984, John Michener summarized the decade between 1971-1981, during which this two-organization delivery system was developed:

A state Judicare system, functioning through the Social Services Administration of the Maryland Department of Human Resources, and the county departments of social services, was established in 1971...The Judicare program, funded under Title XX of the Social Security Act and operated on an entitlement basis, reached peak expenditures of approximately \$2.5 million in FY 1981. At this juncture Judicare and the Legal Aid Bureau were the primary mechanism for delivering legal services to the poor of Maryland...Ending of entitlement operations and budget reductions and transfers together reduced Judicare expenditures to \$250,000 in FY 1983, a 90% reduction within two years.¹²¹

There is little information that now is available about the quality of the services provided by Judicare-funded private attorneys, and there was little in the way of quality control. The lawyers who participated in it generally praise it as effective and fair. There may have been some practical checks on quality in the referral process, i.e., a lawyer may have had to perform well to get and remain on the “Judicare lawyer” list and to obtain word-of-mouth referrals. There were inherent checks against gross abuses in the specificity of information that the lawyer was

¹¹⁷ COMAR 07.02.05.09.1 (E).

¹¹⁸ COMAR, § 07.02.05.09.1 (F).

¹¹⁹ Nomination of program for “Innovations” award, given by The Council of State Governments. To qualify, a pro bono program had to accept prescribed eligibility guidelines.

¹²⁰ The 1981 (calendar) budget of the Legal Aid Bureau was approximately \$6,316,000. Information provided by Legal Aid Bureau fiscal staff.

¹²¹ Michener, *Pro Bono Program in Md.*, 17 MD. BAR J., *supra* note 80, at 7.

required to disclose in the Judicare forms¹²² and the fee-approval process, by which either a local judge or lawyer or the statewide MSBA-appointed committee reviewed all of the fee requests. But, if there were quality controls, they were informal and limited.

On the other hand, there was more quality control in the Judicare Program than there is in the private practice of law, and there were no reports of representational problems that provoked major public concerns (at least reported ones). Generally, the legal profession assumes that private lawyers will act professionally, and it offers clients the Attorney Grievance Commission process if they believe their lawyers have acted unprofessionally. It would not be hard to add a client grievance process, as well as some other basic quality controls, to a Judicare-type program today.¹²³

There also is little quantitative information about the prevalent types of legal problems for which Judicare funding was used.¹²⁴ There are general statements about the Judicare caseload in several different articles and reports.

In the early years of Judicare, it appears that among other services, Judicare attorneys were providing services mandated by state statutes, including services in “child adoption/guardianship and CINA (Child In Need of Assistance, e.g., child neglect or abuse) cases,” in which “the child [was] entitled to legal representation;” and “adult protective service or guardianship cases.” Mr. Michener said: “*Up until 1981, these statutes were virtually unused since representation was routinely provided to such clients through the Judicare program. With the cutback in the Judicare program the Maryland Legal Services Program tried to fill the gap by contracting with the Legal Aid Bureau for the needed representation.*”¹²⁵

¹²² As noted above, the Judicare form required the lawyer to indicate the number of, and time spent on, “pleadings,” “court appearances,” “client conferences,” and “other conferences;” whether there was an issue in the case that was “contested” and “tried before a judge or master;” whether “briefs” were “submitted;” whether there were “any unusual legal problems” in the case; and the names of the “opposing party” and “opposing counsel.” Form Information, Part C-Billing, Appendix 2.

¹²³ See Part II (Recommendation 1), and Part IV below, discussing Wisconsin Judicare Program.

¹²⁴ The grossly underfunded administrative component of the DHR LSP, consisting basically of the Director and his support staff, could not provide real quality control over the attorneys throughout the State.

¹²⁵ John Michener, *Interactive Pluralism: Maryland’s System of Interlinked Models* (1988) (unpublished), at 4 (emphasis added).

By 1992, however, the State had contracted with the LAB and other providers to provide many of these statutorily-required services. Indeed, a substantial part of the earlier Judicare funding had been transferred to the LAB for this purpose.

By 1992, according to the Family Law Council, over 90% of the Judicare cases “involve[d] family and domestic issues,” at an “average case cost [of] \$250.”¹²⁶

What is clear is that legal services advocates of the time thought Judicare was an effective and cost-efficient way to supplement the larger volume of indigent legal services provided by the Legal Aid Bureau, which all agreed was and should be the central provider.

For example, in its Action Plan, the 1988 Cardin Commission addressed the important role that private lawyers should play in providing legal services to the poor. It began with a set of “assumptions.”¹²⁷ These included that: “[t]he primary mechanism for the provision of legal assistance to the state’s population will continue to be the traditional fee-for-services approach.” It also assumed, based on the number of Maryland lawyers in private practice (then, about 7,000—today over 20,000), that “there will continue to be a substantial body of attorneys who are potentially available to provide Judicare, other reduced fee, and [pro bono] legal services to low-income people.”¹²⁸

The Commission surveyed “judges, bar leaders, and human services organizations,” and many recommended both “expanding the funding to the State’s staffed legal services organizations serving the poor” and increasing “funding to the Judicare program.”¹²⁹

In its Recommendations, the Commission said: “If increased state allocations permit,” The State should “reinstitute the Judicare program statewide with reduced fees paid to attorneys sufficient to obtain legal services in the different areas of the state for cases that cannot be served by nonprofit legal services programs or placed with pro bono attorneys in the client’s jurisdiction.”¹³⁰ The Commission also recommended that bar associations: “[r]ecruit panels of attorneys to provide legal services at a reduced fee to income-eligible persons who are above the poverty level but below the MLSC eligibility level (or higher local standard) in legal problems that are underserved by existing legal services programs in the jurisdiction,” and work to support

¹²⁶ 1992 Family Law Council Report, *supra* note 39, at 58.

¹²⁷ 1988 Legal Services Action Plan, *supra* note 3, at 5.

¹²⁸ *Id.* at 5-6.

¹²⁹ *Id.* at 24.

¹³⁰ *Id.* at 35.

“the mutual roles of private attorneys and legal services programs in providing legal services to the poor.”¹³¹

In 1992, the Family Law Council made a series of similar recommendations. It said its “court access” committee had “identified the legal services programs that seem most cost effective in providing domestic legal services to low-income individuals.” The Council began with the Judicare Program, saying: “The Committee identified the Judicare Program as one of the most successful and cost effective legal services programs in Maryland. In operation since 1971, the program provides legal assistance to individuals who meet the MLSC income eligibility standards.”¹³² It noted that Judicare “involves very few administrative costs because existing offices, such as the State Department of Human Resources and local departments of social services, perform a substantial portion of the necessary administrative tasks. In addition, local representatives review, at no cost, requests by attorneys for payment.”¹³³

Among the Council’s “recommendations for the legislature” was:

“The State should resume funding Judicare as soon as the State’s fiscal situation improves. The program should be maintained and expanded by increasing its funding so that it can handle more cases and expand operation of the program into jurisdictions where the Legal Aid Bureau has offices, but cannot provide domestic legal services to all those who are eligible and require such services.”¹³⁴

The Council explained:

This recommendation arises from the finding that Judicare remains cost effective and efficient. In addition, more than ninety percent of Judicare cases involve domestic and family matters. Thus, this program contributes significantly to increased access to courts for domestic legal remedies to low-income persons. The program should expand in two ways. First, the program’s funding should increase so that it can handle more cases and reach a greater portion of the low-income population. Second, the program should expand to operate even in jurisdictions that have Legal Aid Bureau offices. This recommendation reflects the fact that Legal Aid Bureau offices in some jurisdictions do not handle domestic and family matters, and some do not even have domestic services intake.

¹³¹ *Id.* at 35-36.

¹³² 1992 Family Law Council Report, *supra* note 39, at 57.

¹³³ *Id.* at 58.

¹³⁴ *Id.* 58. The Council said that Judicare operated in “Calvert, Caroline, Carroll, Cecil, Dorchester, Garrett, Kent, Somerset, St. Mary’s, Talbot, Washington, and Worcester” counties. *Id.* at 58, n. 144.

As a result, low-income families in these jurisdictions do not have access to domestic legal services.

Thus, due to the cost effectiveness of Judicare and its ability to reach the unserved, any additional funding will result in the provision of increased domestic legal services to low-income individuals. In keeping with its commitment, the state should resume funding Judicare as its fiscal condition improves.¹³⁵

The Council also recommended that “[s]liding fee scale, minimum fee, and reduced-fee programs” should be developed in Maryland to help low-income persons obtain more effective access to courts.¹³⁶ The Council’s court access committee concluded that this could be done within the “MLSC income eligibility requirements.” The Council based its recommendation, in part, on its investigation of such programs in other states, which “led to the conclusion that these programs appear instrumental in increasing access to legal remedies for low-income clients.”¹³⁷ It said: “In operation, these programs initially determine a client’s income eligibility. Depending on the client’s income level, either the programs provide the legal services at no cost, or the client must make some contribution toward the cost of the legal services. No administrative barrier exists that would prevent MLSC grantees from requiring clients to pay this type of minimal fee in return for legal services.”¹³⁸

The Council also addressed the need for more attorneys in contested domestic cases.

...[T]he number of clients with contested cases denied representation remains high. This occurs because of both the overwhelming demand for domestic legal services and the shortage of volunteer attorneys experienced in handling more complex domestic law issues. In addition, for a variety of reasons, many pro bono attorneys are reluctant to accept domestic cases, especially contested cases. Domestic cases, even those that initially appear relatively simple, can become complicated and require a substantial amount of time. In addition, because of the recurring nature of many family problems, domestic cases often resurface.¹³⁹

To respond to this problem, the Council endorsed the “Judicare Supplementation Program,” which, then “funded by MLSC, allows compensation to qualified pro bono attorneys who spend more than twenty hours on a case. Qualified pro bono attorneys are those affiliated

¹³⁵ 1988 Legal Services Action Plan, *supra* note 3, at 58.

¹³⁶ *Id.* at 8, 59.

¹³⁷ *Id.* at 59.

¹³⁸ *Id.* at 60.

¹³⁹ *Id.* at 62.

with programs recognized by the People's Pro Bono Action Center, Inc.”¹⁴⁰ The Council recommended that “Pro bono attorneys should be eligible for compensation through Judicare or the Judicare Supplementation Program when they handle complicated or contested domestic matters for low-income clients, even in jurisdictions where a Legal Aid Bureau office exists. Further, attorneys should be compensated when they spend over ten, rather than over twenty, hours on a case.”¹⁴¹

2. Maryland’s current reduced fee programs for family cases

In the last decade, Maryland has diversified its legal services delivery system in the area of family law by creating several different types of reduced fee programs. I focus here on two: 1) the self-help centers; and 2) the contested custody representation projects. A number of the centers and projects are hybrids, with private attorney, staff, and volunteer components. They also operate in conjunction with staffed and volunteer programs. The descriptions that follow are of the full assortment of programs, not just the private attorney components.

a. Self-help centers

There is a self-help center in every jurisdiction. They have basic similarities but also significant differences. Through them, private and public lawyers, including volunteer lawyers, and paralegals interview people who have family law problems and are considering filing pleadings pro se; provide legal information to them, and help them fill out and file the simplified pleading forms; provide limited advice to them (many, but not all of the centers); and refer them for additional services.

i. Structures

- **Contractual lawyers:** In the primary model, used in twelve jurisdictions, circuit courts, operating through their Family Divisions and Family Law Administrators and Support Services Coordinators, contract with attorneys, on a rotating basis, to provide legal information, advice, forms assistance, and referrals. Although the vast majority of contractual attorneys are in

¹⁴⁰ *Id.* at 62.

¹⁴¹ *Id.* at 63. The Council said: “The Judicare Program currently operates only in jurisdictions where there is no Legal Aid Bureau office. This means that in areas where Legal Aid Bureau offices do exist, attorneys cannot receive compensation for providing services to low-income individuals. This discourages pro bono attorneys from volunteering to represent low-income clients in contested domestic matters where complications might arise. The Committee believes that if attorneys could expect some limited compensation for their efforts in contested domestic cases, volunteers would undertake more of these cases.” *Id.*

private practice, in two jurisdictions, there are reduced fee contracts with Legal Aid Bureau lawyers.

As of March, 2007, the centers using this model had contracts with attorneys as follows: *Baltimore County*: nine private attorneys; *Caroline County*: eight private attorneys; *Cecil County*: a LAB lawyer and three private lawyers; *Dorchester County*: five private lawyers; *Frederick County*: primarily one private lawyer, but with others available if necessary; *Kent County*: two private attorneys; *Queen Anne's County*: 15-18 private attorneys; *St. Mary's County*: one private attorney; *Talbot County*: four private attorneys; *Somerset County*: a LAB lawyer and a private lawyer; *Wicomico County*: a single private lawyer; and *Worcester County*: two private attorneys.

In this model, the family division administrator usually plays a strong role, e.g., in recruiting and scheduling the attorneys, providing the courthouse office and necessary administrative support, answering questions from and directing pro se litigants to the lawyers; providing supplemental (and sometimes the basic) information to the litigants; and responding to the needs of the court in managing pro se litigation. In four other jurisdictions, private lawyers provide services by subcontract with a provider.

- **Provider-operated or managed.** In this second model, used in seven jurisdictions, the circuit court contracts with a legal services provider. In four of the seven jurisdictions, the provider subcontracts with private lawyers to provide the services. In three, the provider uses a staff model, sometimes augmented with volunteer lawyers, to provide the services. The seven jurisdictions are:

Allegany County: The court contracts with the Allegany Law Foundation, and the Foundation subcontracts with two private attorneys, to provide legal information, forms assistance, and referrals to pro se litigants one day a week (five hours). In addition, one day per month, the project provides legal information and assistance in a local public library. The Foundation also operates a hotline through which it gives information and advice to pro se litigants (among others).

Anne Arundel County: One lawyer and one paralegal from the LAB provide legal information, forms assistance, and referrals to pro se litigants five days a week (eight hours a day three days a week, and four hours two days). Several lawyers provide this service by rotation. In

addition, a LAB paralegal in the LAB office gives information to callers by telephone five days a week, three hours a day, helping those who cannot come to the court.

Baltimore City: One lawyer and two paralegals from the LAB provide legal information, forms assistance, and referrals to pro se litigants five days a week, eight hours a day. A number of lawyers and paralegals share this duty on a rotating basis.

Calvert County: MVLS generally administers the center by developing the schedule, recruiting and subcontracting with four private attorneys to provide coverage, gathering data, and providing forms and support to the attorneys. The attorneys provide legal information, advice, forms assistance, and referrals.

Howard County: MVLS generally administers the center by developing the schedule, recruiting and subcontracting with six private attorneys to provide coverage two half days a week, gathering data, and providing forms and support to the attorneys. The attorneys provide legal information, advice, forms assistance, and referrals.

Prince Georges County: Community Legal Services of Prince Georges County operates the center under an annual contract. It provides legal information, advice, forms assistance, and referrals through staff attorneys (three), paralegals (one), and volunteer lawyers. (Note: The Prince Georges County Circuit Court, itself, also provides substantial services to pro se litigants, as discussed below.)

Washington County: MVLS has subcontracted with one private attorney to staff the center. The attorney provides legal information, advice, forms assistance, and referrals.

- **Pro bono lawyers:** In the third model, used in two jurisdictions, pro bono lawyers provide legal information, advice, forms assistance, and referrals. The two jurisdictions are:

Carroll County: The Family Law Administrator recruits, trains, schedules, and supports volunteer lawyers (16 at the current time), who provide services on a rotating basis.

Charles County: The office is staffed by volunteer lawyers recruited by the local bar association president. This is a duty that every president assumes. The numbers of pro bono attorneys who staff the office, one day a week, vary, but there usually are 6-8 a year.

- **Court-provided services:** In the fourth model, used in four jurisdictions, the court, itself, through its family division or a pro se project, provides the services. These jurisdictions are:

Garrett County: In the past, a private lawyer provided some legal advice and

information to pro se litigants in sites outside the courthouse. With his retirement, the family services coordinator in the courthouse provides legal information and forms assistance.

Harford County: The court has a Pro Se Forms Assistance Project Director who also is a paralegal. She supervises two other paralegals. They provide information and assistance to pro se litigants in the clerk's office of the courthouse and also by telephone. There also is a private attorney who, by contract, provides legal advice to the paralegals and to a limited number of litigants, upon referral by the paralegals. In addition, there are volunteer attorneys who, through a Pro Se Conference program, attempt to settle cases that involve two self represented litigants.

Montgomery County: Three full time attorneys and a paralegal, working through the court's Pro Se Project, provide legal information, advice and assistance in forms preparation to pro se litigants. There is a Spanish-speaking staff member who provides assistance to Hispanic residents of the county, and interpreters are available.

Prince Georges County: In addition to the services provided by Community Legal Services of Prince Georges County, the court provides two additional sets of services. When pro se litigants first enter the courthouse, there is an information center that distributes the forms and provides limited procedural information. Those who need more help are referred to the paralegal office, in which seven paralegals provide additional information (but not advice) to the litigants. (They also provide information by phone). In a number of cases, the third step in the process is to refer litigants to Community Legal Services, where they can receive legal advice and case-specific assistance in completing the forms.

ii. Rates of compensation

The hourly rates for the contractual attorneys run the gamut, from \$40 an hour to \$100 an hour; in between, are \$45, \$50, \$65, and \$70, \$75, and \$82 hourly rates in the various jurisdictions. A number of the grants and flat sum contracts seem calculated to compensate lawyers in the \$60-\$65 hourly range. As noted above, it is not just private lawyers who provide these services; in two jurisdictions, Cecil and Somerset Counties, the LAB provides such contractual services.

iii. Hours of service

There is a great range in the number of hours per week that the centers are open, as well, depending on the size of the pro se litigant population, i.e., from three hours to 40 hours a week.

Several centers offer evening hours; some provide off-site services (e.g., in public libraries); and some coordinate their services with important court events, e.g., scheduling and settlement conferences. The substantial majority of centers offer assistance on a “walk-in, first come first served” basis, but a few centers schedule appointments, and Dorchester County operates primarily by appointment.

iv. Financial eligibility

Some of the centers screen for financial eligibility; others do not. Those that do screen use the MLSC financial eligibility guidelines.

As set forth in Part II, Recommendation 1, I believe the self-help centers can play an important role in the effort to increase the legal services available to indigents in family cases, primarily by conducting much of the intake for a new service program, helping to identify those who need and are eligible for additional legal services, and making referrals for those services.

b. The Contested Custody Representation Project

i. 2003 evaluation

The project now is in its seventh year of operation. In 2003, the University of Baltimore Law School’s Center for Families, Children, and the Courts evaluated the then three-county experimental project. The key points in the evaluation were these:

- *The unmet legal need:* The need for counsel in child custody cases “was generally acknowledged to be the most critical under-served legal need of low-income persons in [Maryland, and] MLSC determined that the need for legal representation by low-income persons in child custody cases could not be served through pro bono services or through existing staff attorney resources.”¹⁴²
- *Triage eligibility criteria:* In addition to MLSC income eligibility requirements,

¹⁴² MCCRP Evaluation, *supra* note 14, prepared by Gloria Danziger, Center for Families, Children and the Courts University of Baltimore School of Law, at 1. In addition to increasing representation of eligible parents or caretakers, the project goals were to “establish a model that can facilitate similar projects around the state,” and to “demonstrate the extent to which legal services are required for this discrete case category.” *Id.* at 6-7. The evaluation also noted that “the original intent of this project was to provide clients primarily with representation in litigation...” This was “because brief services/interventions could be obtained through other existing programs and, due to the nature of high-conflict custody cases, the vast majority of clients involved in this program would end up in court.” *Id.* at 7.

project clients were required to satisfy “at least one of the following criteria”: 1) “The child is at risk due to abuse and/or neglect”; 2) “The opposing party is represented, the person seeking representation is the primary caregiver and the caregiver is a fit and proper person to care for the child”; 3) “The party needing representation is not the primary caregiver, but the primary caregiver is not fit and proper due to abuse and/or neglect, substance abuse, criminal conduct, or other incapacitating reasons”; 4) “The party needing representation has a complete denial of visitation”; or 5) “A specialized program (e.g., House of Ruth or local county domestic violence project) is unable to provide representation in the Circuit Court custody case after expiration of a protective order.”¹⁴³

- *Staff and private attorney components*: The project “consists of two components”: 1) “a *Reduced Fee Private Attorney Component* encompasses attorneys from the private bar who agree to represent eligible clients for \$50/hour, up to \$1000/case (but are obligated to complete the case regardless of the number of hours involved),” and 2) “a *Staff Component*,...comprised of 3.5 full-time equivalent attorneys from the Legal Aid Bureau (LAB).”¹⁴⁴

- *Original purpose*: The evaluation said that “the original intent of this project was to provide clients primarily with representation in litigation...” This was “because brief services/interventions could be obtained through other existing programs and, due to the nature of high-conflict custody cases, the vast majority of clients involved in this program would end up in court.”¹⁴⁵

- *Case data*: The case data for FY 2002 were as follows: “Total cases closed...were 275 (98 reduced fee private attorneys, 177 staff attorneys, 140 cases involving representation in litigation) for total funding from the Administrative Office of the Courts and MLSC that fiscal year of \$352,478, for an average cost per case of approximately \$1,282.”¹⁴⁶

¹⁴³ MCCRP Evaluation, *supra* note 14, at 6. Staff have some discretion to accept other cases.

¹⁴⁴ *Id.* at 1. The “local bar associations in Montgomery and Prince George’s counties and, initially, the Maryland Volunteer Lawyer’s Service (MVLS) on behalf of Anne Arundel County,” provided the attorneys for the private bar component. In “2000, however, MVLS terminated its relationship with the Anne Arundel County program,” and “the YWCA of Annapolis and Anne Arundel County, Legal Services Division,” picked it up. *Id.* at 8-9.

¹⁴⁵ *Id.* at 7.

¹⁴⁶ *Id.* at 2. During the first nine months of project operation, 38 private attorneys accepted 46 cases (23 in Montgomery County, 16 in Prince George’s County, and 7 in Anne Arundel

- *The services provided by the two components:*

1. *Private attorney component:* The evaluation “found that the reduced fee private attorney component consistently provided a proportionately higher percentage of litigation services than is provided by the staff component...”¹⁴⁷ The litigation services ranged “from 59.5% of services provided in FY 2001 to 72.9% in FY 2002...”¹⁴⁸

2. *Staff component:* the evaluation found that “the staff attorney component provided a more ‘holistic’ approach to their clients’ legal problems in addition to the custody matter.”¹⁴⁹ This approach “often entail[ed] a range of services that are not typically provided by reduced fee attorneys...Litigation accounts for only 11.4% of services provided by staff attorneys in FY2000, 39% in FY2001, and 38.9% in FY2002.”¹⁵⁰ The holistic approach meant that staff lawyers were able to refer clients for supplemental legal services that they needed, and to broker non-legal services as well.¹⁵¹ They also could follow the cases in the future, to provide services that the clients might come to need.¹⁵²

- *Cost of the two components:* Based on “a rudimentary cost-benefit analysis and comparison between the staff and reduced fee components” (using the FY2002 data), the evaluation concluded that for the staff attorney model, “the cost per closed case is \$1843,” and for the reduced fee model, the cost is “\$1046 per case...”¹⁵³

- *Stakeholder satisfaction:* The Evaluation’s “stakeholder satisfaction survey

County). *Id.* The LAB lawyers “served a substantially larger population,” opening 206 cases (107 in Prince Georges County, 75 in Montgomery County, and 24 in Anne Arundel County). “Accordingly, the total number of clients served for the first year (nine months actual) was 252.” *Id.* at 9. During FY 2000, 13 of the 46 private cases were closed, with nine of them (69.2%) being closed after litigation. The private attorneys spent 341.5 hours on project cases during FY 2000, most of it on the closed cases. *Id.* at 10. Seventy-nine (79) of the 206 LAB cases were closed, with the services provided as follows: brief service/advice: 29 (36.7%); counseling: 15 (19%); negotiation: 3 (3.8%); litigation: 9 (11.4%); and other: 23 (insufficient merit to proceed; change in eligibility; client withdrew, etc.) (29.1%). *Id.* The LAB lawyers spent 3,881.5 hours on the project cases during this period. *Id.* at 11.

¹⁴⁷ MCCRCP Evaluation, *supra* note 14, at 2-3.

¹⁴⁸ *Id.* at 15.

¹⁴⁹ *Id.* at 2-3.

¹⁵⁰ *Id.* at 16.

¹⁵¹ Staff attorneys pointed out the “multiple problems that pervade high conflict custody cases, such as special education needs, Social Security questions, child protective services, and other social services.” MCCRCP Evaluation, *supra* note 14, at 34.

¹⁵² *Id.* at 27-28.

¹⁵³ *Id.* at 17.

revealed a high degree of satisfaction with the project. Unfortunately, the majority of judges and masters in the three project counties were not aware of the project itself. Those who did know about it, however, uniformly believe that the project is helpful both to litigants and the Court, mentioning that it facilitates the court's process, improves the quality of custody decisions, and promotes access to justice for low-income and indigent families."¹⁵⁴ Some of the judges and masters explained why they believed the project made the adjudicatory process fairer. Many pro se litigants "are not adequately prepared to engage in custody litigation and they may risk losing a child," in part because some "are not familiar with court procedures, such as rules for filing petitions and service of process," and "are not aware of the rules of evidence, particularly as they relate to the admissibility of documents." In addition, "in a contested custody matter, litigants usually do not know what information is most helpful to the court."¹⁵⁵ Moreover, "the project promotes a level playing field for settlement discussions or hearings, correcting inherent issues of fairness when one party has access to a lawyer and the other does not."¹⁵⁶ There are collateral benefits as well. "[L]itigants who are eligible for pro bono or reduced fee legal assistance are placed with attorneys more quickly, thus expediting their access to justice," and "the project has increased the pool of attorneys available to indigent litigants involved in related family law matters," including those who are willing to do pro bono work.¹⁵⁷ The project expedites, and helps to produce "better-informed judicial decision-making."¹⁵⁸

- *Participating attorneys' views:* The project attorneys identified strengths and needs of the project. "Both reduced fee and staff attorneys cited access to legal advice and their own personal satisfaction as two of the project's major benefits." The private "attorneys indicated that they would like to see additional funding to compensate attorneys for personal expenses and litigation support, while staff attorneys mentioned the desirability of increased funding to cover costs for experts, depositions, and transcripts."¹⁵⁹ The private attorneys also recommended that the project add a social services component,¹⁶⁰ increase the \$1,000 cap on

¹⁵⁴ *Id.* at 3.

¹⁵⁵ *Id.* at 21.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 21-22.

¹⁵⁸ *Id.* at 22.

¹⁵⁹ *Id.* at 3.

¹⁶⁰ Needed services include "parent education seminars, psychological and medical assessments, mediation and family counseling." *Id.* at 32.

cases to recognize protracted nature of some custody disputes, provide law students to work on cases, and develop a better screening process.¹⁶¹ Staff attorneys also recommended that the project provide funding for necessary experts and discovery (depositions), develop more cooperation between the two sets of lawyers[,]¹⁶² and respond to the special need to provide representation to growing numbers of elderly caretakers who do not qualify for “parents-first” legal triage.¹⁶³

- *Client satisfaction:* Surveys of clients revealed that both “LAB and private attorney clients” were highly satisfied with the services. Based on client comments, the Evaluation said that “without the project, these individuals are not adequately prepared to engage in custody litigation and they may risk losing a child. Pro se litigants are neither familiar with court procedures, such as rules for filing petitions and service of process, nor with the rules of evidence, particularly as they relate to the admissibility of documents.”¹⁶⁴

- *Other findings:* The evaluation also concluded that “[c]lients need greater and better access to social services to better inform them about resolving or preventing custody disputes;” there is a need for “increased collaboration and cooperation between the two [project] components;” and there is a “growing number of elderly individuals who are

¹⁶¹ MCCRCP Evaluation, *supra* note 14, at 28-30. Some also noted the needs for “access to foreign language translators and resources to provide for an investigative service such as a home site visit,” *Id.* at 33, and for “mental health assessments.” *Id.*

¹⁶² LAB Project Director Hannah Lieberman contended that under the original project design, the private attorneys would have provided “wraparound” representation to those clients who had more income/resources than allowed by the national Legal Services Corporation guidelines but who satisfied the MLSC income guidelines, *Id.* at 31, rather than creating “parallel services.” *Id.* at 37. The Evaluation equivocates on this point, saying “it may be that the more effective structure is based on parallel services.” *Id.*

¹⁶³ *Id.* at 33. The lawyers also identified several administrative issues: “Several attorneys pointed out that there have been instances in which litigants qualify for the program initially but find employment during the process, rendering him/her ineligible for the program. In these instances, attorneys maintain, they should have the right to withdraw. In addition, the suggestion was made that litigants sign a certification of income between the time of the scheduling conference and the pre-trial conference.” *Id.* at 32. In addition, some project attorneys mentioned “difficulty with client compliance, specifically, keeping appointments, supplying necessary documents, and other activities necessary for case preparation. Several attorneys felt that clients took the service for granted and suggested that the Foundation/referring agency should advise clients that it is important to be responsible and cooperative with the attorney litigating the case. If the referral agency has a record of lack of cooperation on the part of a particular client, that agency should not refer him/her to any other legal service.” *Id.* at 32-33.

¹⁶⁴ *Id.* at 4.

caretakers and [an] increasing number of minority populations in each of the counties.”¹⁶⁵

- *Overall conclusions:* The Evaluation concluded that the project “is providing necessary legal services to clients...[and] helping to move cases through the system more quickly and judiciously than if these clients had no representation.” In addition, “there is no doubt that both data and interviews of stakeholders clearly and forcefully demonstrate the expanding need for this project.”¹⁶⁶ After summarizing the data contained in the next chart, the Evaluation concluded: “Overall, the benefits of the project as they relate to stabilizing the custody arrangements for children may alone justify its continuance.”¹⁶⁷

- *Recommendations:* The Evaluation contained several recommendations, including: 1) collect more data, including about “each component;” 2) develop “additional partnerships with community providers;” 3) enhance collaboration between the two components; 4) “implement staff training programs;” and 5) “conduct client exit polls.”¹⁶⁸

ii. The CCRP today

Today, the CCRP reaches into every jurisdiction in Maryland. There are ten providers, six of which focus on a single county;¹⁶⁹ two of which are regional;¹⁷⁰ and two of which are placing cases in multiple jurisdictions.¹⁷¹ There is some overlap, although much of it is

¹⁶⁵ *Id.* at 3-4.

¹⁶⁶ *Id.* at 4-5.

¹⁶⁷ *Id.* at 18.

¹⁶⁸ *Id.* at 4. There would be reciprocal benefits from cooperation, e.g., staff attorneys could consult private lawyers about issues arising out of “pension plans and qualified domestic relations orders,” and private attorneys could benefit from “the domestic expertise and experience of LAB attorneys.” *Id.* at 31 The data that the evaluation recommended be gathered should elucidate the “significant differences between the way in which each project component handles cases,” including data that indicate the extent to which staff attorneys follow up on the cases and provide supplemental legal services to clients. MCCRCP Evaluation, *supra* note 14, at 36-37. The enhanced training should be for “for complex family law issues.” *Id.* at 38-39.

¹⁶⁹ The Allegany Law Foundation (Allegany County); YWCA of Annapolis and Anne Arundel County (Anne Arundel County); Community Legal Services of Prince George’s County (Prince Georges County); Harford County Bar Foundation (Harford County); Montgomery County Bar Foundation (Montgomery County); and Women’s Law Center (Baltimore County).

¹⁷⁰ The Mid-Shore Council on Family Violence (Caroline, Dorchester, Kent, Talbot, and Queen Anne’s Counties); and Southern Maryland Center for Family Advocacy (Calvert, Charles, and St. Mary’s Counties).

¹⁷¹ The Legal Aid Bureau (Allegany, Anne Arundel, Baltimore, Montgomery, and Prince Georges Counties); and Maryland Volunteer Lawyer Service (Baltimore City, and Baltimore,

ameliorated by the different financial eligibility guidelines of providers and the back-up role that MVLS plays in several counties.¹⁷²

For FY 2006, the AOC provided the LAB \$557,500 in grant funds for the project, and the LAB expended those funds during FY 2006 on the project.

For FY 2006, the MLSC paid \$224,609 in aggregate grant funds to the private attorney project providers, and these providers expended \$122,419 during the fiscal year on the project. (There was \$102,190 in unspent and unencumbered funds.)¹⁷³

The MLSC grants are based on the projected number of cases that the grantee will place with a private lawyer multiplied by \$1,000 (the maximum fee).¹⁷⁴ These funds are “encumbered” when the grantee places the case. The MLSC estimates the “overhead” costs at about 10%. The following chart shows the FY 2006 case numbers per jurisdiction (with five or more cases) for the private attorney component, along with the percentages of total FY 2006 private attorney caseload for the CCRP and the relevant percentages of the State’s poverty population.¹⁷⁵

Calvert, Carroll, Cecil, Charles, Frederick, Garrett, Howard, Somerset, Washington, Wicomico, and Worcester Counties).

¹⁷² By county, the providers are: Allegany: Allegany Law Foundation and LAB; Anne Arundel: YWCA of Annapolis and Anne Arundel County and LAB; Baltimore City: MVLS; Baltimore County: Woman’s Law Center, MVLS (WLC overload), and LAB; Calvert: Southern Maryland Center for Family Advocacy and MVLS; Caroline: Mid-Shore Council on Family Violence; Carroll: MVLS; Cecil: MVLS; Charles: Southern Maryland Center for Family Advocacy and MVLS; Dorchester: Mid-Shore Council on Family Violence; Frederick: MVLS; Garrett: MVLS; Harford: Harford County Bar Foundation; Howard: MVLS; Kent: Mid-Shore Council on Family Violence; Montgomery: Montgomery County Bar Foundation and LAB; Prince Georges: Community Legal Services of Prince George’s County and LAB; Queen Anne’s: Mid-Shore Council on Family Violence; St. Mary’s: Southern Maryland Center for Family Advocacy; Somerset: MVLS; Talbot: Mid-Shore Council on Family Violence; Washington: MVLS; Wicomico: MVLS; and Worcester: MVLS.

¹⁷³ The MLSC FY 2006 Project reports: “Status Report on Reduced-Fee Contested Custody Representation Project” (private attorney component); “Child Custody Project: Legal Aid Staff Component.” In the private attorney component report, MLSC said: “MLSC awarded \$280,959 for FY 2006 funding for the reduced-fee contested custody project, which provides \$50/hour up to \$1,000/case to attorneys in private practice accepting these cases on behalf of MLSC-eligible clients, as well as administrative expenses for the organizations administering the project. Because some programs needed to spend down some carryover funds, thus lowering the total expenditures for the fiscal year, MLSC actually paid \$224,609 in FY 2006 grants.

¹⁷⁴ Through a waiver process, lawyers can be paid up to \$1,500 in exceptional circumstances.

¹⁷⁵ FY 2006 Status Report on Reduced-Fee Contested Custody Representation Project: Private Attorney Component.

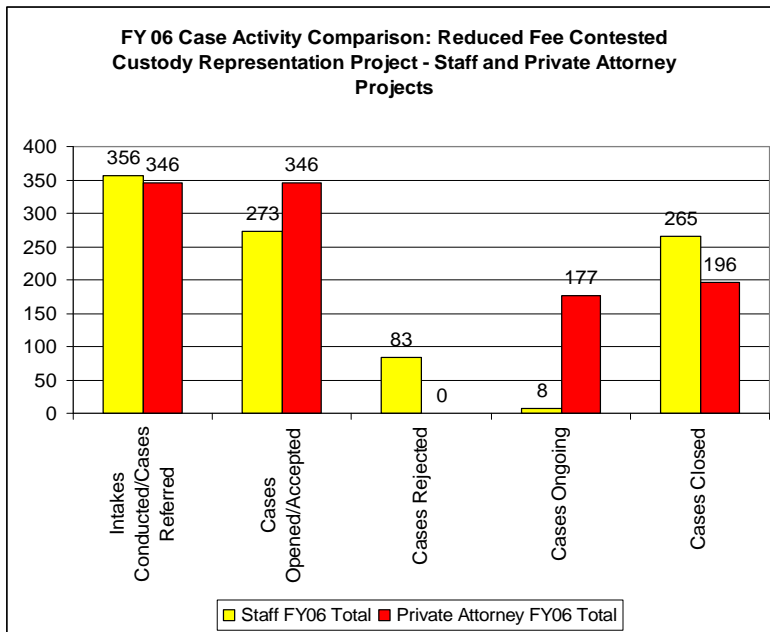
Chart 9: Reduced Fee Cases: FY 2006 CCRP *

Jurisdiction	No. of Cases FY 2006	% of Total FY 2006 cases	% of State's poverty population (2003)
Montgomery County:	112	32.4 %	10.8%
Baltimore County:	45	13%	12%
Anne Arundel County:	40	11.6%	6%
Prince Georges County:	30	8.7%	14.3%
Harford County:	29	8.4%	2.8%
Allegany County:	21	6.1%	2.3%
Baltimore City:	20	5.8%	28.6%
Howard County:	9	2.6%	2.3%
Charles County:	7	2%	1.8%
Washington County:	7	2%	2.7%
Frederick County:	5	1.5%	2.2%
St. Mary's County:	5	1.5%	1.5%
Other:	16	4.6%	12.9%

* Data from Status Report on Reduced-Fee Contested Custody Representation Project: FY 2006

The following chart shows FY 2006 case activities for both the reduced fee and staff components of the CCRP for FY 2006.

Chart 10*

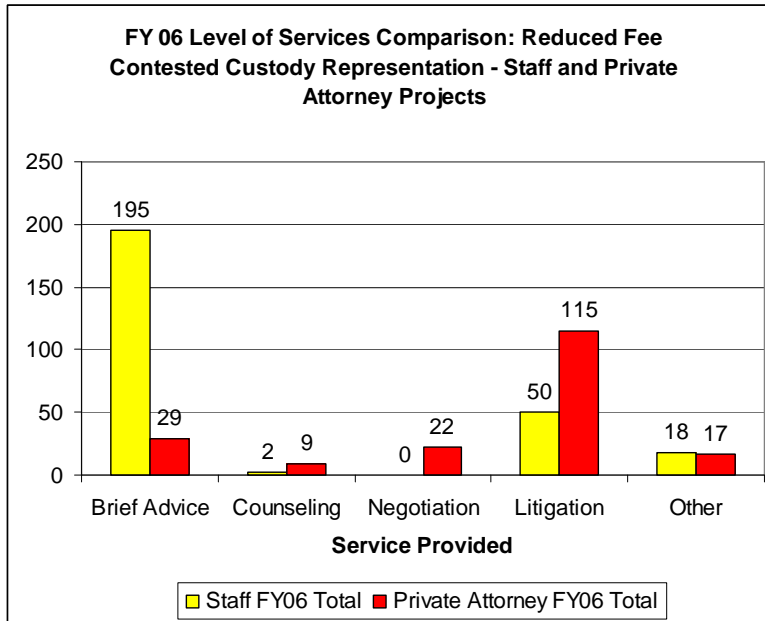


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* Data obtained from Child Custody Project: Legal Aid Staff Component FY2006 & Status Report on Reduced-Fee Contested Custody Representation Project FY 2006

The following chart shows the levels of services for both components for FY 2006.

Chart 11*



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* Data obtained from Child Custody Project: Legal Aid Staff Component FY 2006 & Status Report on Reduced-Fee Contested Custody Representation Project FY 2006

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By percentage of total services, the FY 2006 levels of services for the two project components were as follows:

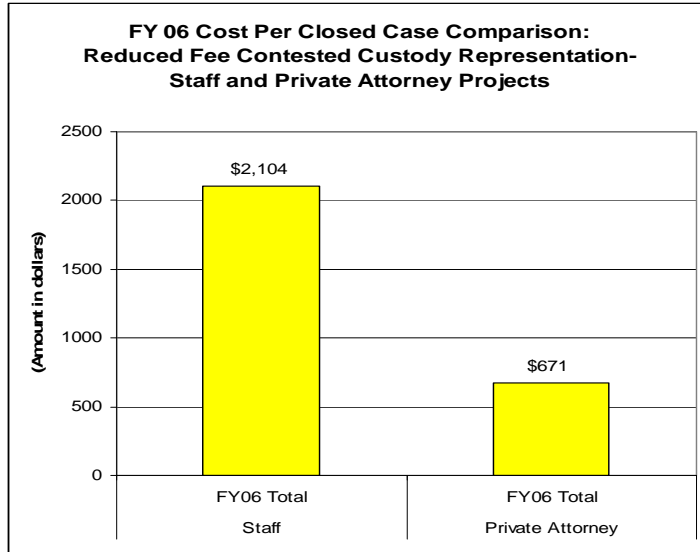
- Private attorney component: litigation: 60%; brief advice: 15%; negotiation: 11%; counseling: 5%; and other: 9%.

- Staff attorney component: brief advice: 74%; litigation: 19%; other: 7%; counseling: 1%; negotiation: 0%.

The average costs per closed case, as depicted in the next chart, were as follows:

- Staff component: \$2,104.
- Private attorney component: \$671.

Chart 12*



* Data obtained from Child Custody Project: Legal Aid Staff Component FY 2006 & Status Report on Reduced-Fee Contested Custody Representation Project FY 2006

The FY 2006 reports also indicated the following:

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In a little more than one-third of the private attorney cases, the attorneys “exceeded the 20-hour cap for payment, reflecting 703 additional hours or an average of 10 extra hours per case.”¹⁷⁶ These data are based on reported hours and probably understate, perhaps substantially, the number of cases in which the cap was exceeded. I was told that this is because a number of attorneys, including those who do not know about the possibility of cap waivers and above-cap payments, do not keep track of their above-cap time.

The average time it took to make a referral to a private attorney was “23 days, ranging from 5 to 52 days.”¹⁷⁷

¹⁷⁶ “Of 196 closed cases, 68 cases (35%) exceeded the cap.” FY 2006 Status Report on Reduced-Fee Contested Custody Representation Project: Private Attorney Component.

¹⁷⁷ *Id.*

The changes in FY 2006 (from FY 2005) in the average cost per closed case were a 4% decrease in cost for the private attorneys and a 112% increase in cost in the staff component (from \$ 994 to \$2,104 per case).

The FY 2006 clients in both project components were overwhelmingly women: 91% in the LAB cases, and 87% in the PAP cases.¹⁷⁸

iii. The views of the CCRP administrators

In a group meeting in January, 2007, the managers of the projects talked about important programmatic issues.¹⁷⁹

- **Recruitment of lawyers** was at the top of the list. The projects' ability to recruit lawyers appeared to depend, in part, on the size of the jurisdiction, with the smaller jurisdictions, in which there are few new lawyers each year, posing the greatest challenges. Some of these jurisdictions have substantial waiting lists. Lawyer-recruitment strategies included these:

Judicial leadership. There was a consensus that leadership from the bench is a critical component of successful lawyer recruitment program.

Training. Several of the projects, especially the larger ones, have training programs for "new" lawyers (defined as recently admitted or new to family law practice). A training package often includes a manual (or handbook/notebook), and in one jurisdiction, Montgomery County, also includes a CD. The group discussed the possibility of creating jurisdiction-specific websites with online training and materials (including, perhaps, the video presentation of a mock contested custody case and a video orientation by a master or judge--the "do's" and "don'ts" of family law practice in that jurisdiction), and links to local practice forms, legal materials, and the documents that the project asks lawyers to execute, among other things.

Mentors. Several projects provide mentors to new lawyers, who meet with them or are available for consultations.

Outreach. The project managers emphasized the importance of personal outreach efforts, from judges and masters and the project staff. The personal relationships enhance recruiting, provide some quality control, and give staff an opportunity to identify and resolve problems. Project managers recruit face-to-face (including in courthouses), make phone calls (identifying lawyers from the lawyers manual, yellow pages, websites, and bar association lists),

¹⁷⁸ *Id.*; FY 2006 Child Custody Project: Legal Aid Staff Component.

¹⁷⁹ The meeting was on January 25, 2007.

and send letters and emails.

Pools of lawyers. The primary pool, obviously, is full-time family law practitioners. Some project managers described a “graduation” phenomenon that requires continuing replenishing of the pool: Some younger lawyers take reduced fee cases until they develop their own client base, and then end their participation. Some projects have sought to recruit part-time and government lawyers. Some of the larger projects have minimum practice requirements for participation, e.g., two or three years of family law practice experience, and limit the numbers of contested cases they will refer to one lawyer. In smaller jurisdictions, projects recruit across county lines, including lawyers who may live in the project county but practice in a different county.

Type of case. The type of case, of course, is important in recruitment. Contested custody cases are among the most difficult cases to handle given the high emotions of the parties (and the frequent client expectation that the lawyer should be as angry as the client), frequent allegations of abuse (often generating a prior protective order proceeding), and the frequent need for evidentiary and other hearings and proceedings. Some of the projects accept and place custody-modification cases, others do not, with mixed opinion about whether these cases are easier or harder to place.

- **Project management issues.**

Intake procedures. Some projects conduct substantial intake interviews before they ask the client to execute project documents. Others, noting that a significant percentage of people who initially request help “drop out” (do not follow through on the request) before they sign project documents and pay the initial fee (usually \$25), do a cursory initial interview and conduct a more substantial interview after the person returns the executed documents with payment. The discussion emphasized the importance, regardless of the sequence, of including domestic violence in the initial screening so that the project’s mailing of the papers does not trigger an incident.

Payment of fee by client. There was strong sentiment that, assuming the client can afford the fee (if not, they will qualify for a “waiver”), it is good policy to require some fee, even if it is only \$25. Some clients prejudge free legal help as second-class help. For others, the fee requirement makes it clearer that the person is making an important decision in seeking legal assistance.

Payment of fee to lawyer. Some projects require the lawyer to submit a copy of a judgment or consent order before they pay the lawyer. Others pay after the lawyer closes the case and submits a bill. Still others pay upon receipt of a bill during the case, but with the understanding that the lawyer must finish the case. The hourly rate is \$50. Until July 1, 2006, there was case cap of \$1,000. Effective July 1, MLSC agreed to pay an additional \$50 an hour, up to an additional \$500 (\$1,500 total), for every hour over 25 hours that the attorney spends on the case. However, as of the date of the meeting (January 25, 2007), no project had asked MLSC to pay a fee over \$1,000 pursuant to this new policy. At least one project has seven cases for which it will seek an over-\$1,000 payment when they are closed. It appears that many lawyers do not know about this new “supplemental payment” policy. They do not keep track of their time once they exceed the old 20 hour maximum. A few say “it is not worth the time to fill out the paperwork.”

Unhappy clients and quality control. The 2003 evaluation of the then three experimental projects concluded that the great majority of project clients were highly satisfied with the legal services they received. Where there are complaints, they tend to be about a lawyer’s alleged failure to communicate (the number one complaint by clients of lawyers generally), or alleged failure to represent the client zealously. One part of this latter complaint is the expectation of some clients that their lawyer should not be friendly and cooperate with opposing counsel, but rather should exhibit the same anger the client has for his or her spouse.

Where there are real issues about a lawyer’s performance, the projects deal with them incrementally: urging the lawyer to address the problem, and if they do not, replacing the lawyer and terminating the lawyer from the program. There also sometimes are complaints that lawyers exert too much pressure to get clients to execute “agreements,” and that lawyers do not draft orders in a timely manner. In addition, some new lawyers may lack substantive knowledge about more complicated areas of family law (e.g., pension plans), and others may have some “sensitivity” problems in dealing with different types of clients.

A number of the projects use some type of assessment form to identify problems. On the “front end,” several project managers noted that they have minimum requirements for attorneys (e.g., three years of family law practice experience), and would not assign a case to a “first-time” lawyer. Others require mentoring for first-time lawyers.

- **Unmet legal needs** in their jurisdictions, the project managers identified the

following:

1. By type of case and legal problem: Many project managers identified unmet legal needs by type of case and legal problem, including:

a. *Family Law*, including *child custody cases* that do not qualify under the CCRP triage criteria; *spousal support and property issues*; *third party caretaker cases* (some projects accept these cases, others do not); *modifications, including of child custody* (some projects accept these cases, others do not); *child support* (based on concerns that the current child-support enforcement process provides incomplete coverage); *adoptions* (representing children); *contested divorces without domestic violence or contested custody issues*; and *representation of children* (some project managers noted difficulties in obtaining court-appointed guardian ad litem attorneys for children in the aftermath of *Fox v. Wills*, 390 Md. 620; 890 A.2d 726 (2006) (lawyer appointed as guardian ad litem is not immune from malpractice claim).

b. Outside of family law, *bankruptcy, debt collection, and landlord-tenant* were mentioned as high priority unmet legal needs.

2. By need for a lawyer in a particular case, based on a case-specific judgment call: Some argued that project managers should have discretion, perhaps based on a general “good cause” exception to case-acceptance criteria, to make more holistic judgments about the need for counsel in individual cases, e.g., in *complicated family cases with important interests at stake in which a pro se litigant likely will be unable to effectively protect those interests*.

3. By need for enhanced levels of service: Some, focusing on levels of service, suggested a need for *more, and more substantial legal advice in certain family cases* (more than provided by hotlines and courthouse based self-help projects).

4. By income eligibility: Some noted the unmet need for legal services of those “working poor” who have incomes just above MLSC financial eligibility guidelines. Among the recommendations were these: *pay higher hourly rate and case rate* to attract more lawyers to take contested custody cases; and *hire a staff attorney* (in small jurisdiction where lawyer-recruitment efforts have not produced enough lawyers).

c. Overview of self-help centers and contested custody representational projects

Chart 13 is an overview of the operators of the self-help centers and CCRP projects.

Chart 13*
**Operators of Contested Custody Case Representation Projects and
Courthouse Pro Se Centers in Maryland**

COUNTY	CCRP	PRO SE CENTER
Allegany	Alleg. Law F, LAB	Alleg. Law F
Anne Arundel	YWCA, LAB	LAB
Baltimore City	MVLS	LAB
Baltimore	WLC, MVLS, & LAB	Fam Div/Contract attys
Calvert	S. Md. C. F. Ad., MVLS	MVLS/Contract attys
Caroline	Midshore C. Fam. V.	Fam Div/Contract attys
Carroll	MVLS	Pro bono attorneys
Cecil	MVLS	Fam Div/Contract attys
Charles	S. Md. C. F. Ad., MVLS	Pro bono attorneys
Dorchester	Midshore C. Fam. V	Fam Div/Contract attys
Frederick	MVLS	Fam Div/Contract attys
Garrett	MVLS	Fam. Division/Ct
Harford	Har. C. Bar F.	Fam. Division/Ct
Howard	MVLS	MVLS/Contract attys
Kent	Midshore C. Fam. V	Fam Div/Contract attys
Montgomery	Mont. C. Bar F.	Pro Se Project/Ct
Prince Georges	Comm. Leg. Serv.	Mixed: F Div/Ct., CLS
Queen Anne's	Midshore C. Fam. V	Fam Div/Contract attys
St. Mary's	S. Md. C. F. Ad.	Fam Div/Contract atty
Somerset	MVLS	Fam Div/Contract attys
Talbot	Midshore C. Fam. V	Fam Div/Contract attys
Washington	MVLS	MVLS/Contract atty
Wicomico	MVLS	Fam Div/Contract atty
Worcester	MVLS	Fam Div/Contract attys

The above chart highlights the broad range of potential partners in a locally-administered judicare program.

B. Judicare Programs Elsewhere

1. United States

a. Wisconsin: The leading judicare program in the country is Wisconsin Judicare Inc. It is part of a “mixed delivery system,” comprised of both full-time staff layers and private attorneys. The program is responsible for a rural area in northern Wisconsin that includes “33 rural counties and 11 tribal locations.” In this area, over 95,000 people are financially eligible for Judicare services. It is a large area, with some parts of it over 300 miles from the program’s main office in Wausau.¹⁸⁰

i. History of program: The Wisconsin State Bar Association created the Judicare program in 1966 to provide legal services to low income persons in northern Wisconsin. Originally, it was funded by the federal Office of Economic Opportunity. Since 1976, when the national Legal Services Corporation was created, the LSC has funded the program. The bylaws of Wisconsin Judicare, Inc., created in 1972, state that the purpose of the program is to provide people with limited incomes “with the same freedom to choose [an] attorney as any other person.”¹⁸¹

ii. Operation today: Wisconsin Judicare is funded primarily by the Legal Services Corporation (in 2005, a field grant of approximately \$841,908 and a basic field Native American grant of \$141,556”), but also by the Wisconsin Trust Account Foundation (\$80,000 in 2005), and the Wisconsin Department of Health and Social Services Division of Community Services (“a grant of \$52,900” in 2005, to provide services “to Native American elders and training for tribal benefit specialists”).¹⁸² “Judicare [is] the primary (and, for many counties, the only) source of free legal services” in northern Wisconsin.¹⁸³

¹⁸⁰ Letter of February 6, 2007 from Rosemary R. Elbert, Executive Director, Wisconsin Judicare, Inc, to Michael Millemann (“Executive Director’s Letter”).

¹⁸¹ Wisconsin Judicare website, *available at* <http://www.judicare.org/history.htm> (last visited February 10, 2007).

¹⁸² <http://www.judicare.org/history.htm>. Because of reductions in funds provided by the Wisconsin Trust Account Foundation in 2005, the program substantially reduced services. With the addition of an additional grant in 2005-06, the program “resume[d]” providing services in bankruptcy cases (unemployed senior citizens), “custody and SSI” cases, and “more family law”

There are approximately 200 private attorneys who participate in the Judicare program. Over two-thirds of the participating attorneys have more than 10 years of experience. Indeed, a recent program evaluation notes: “The attorney population in northern Wisconsin is aging, so Judicare has increased its recruitment efforts with younger attorneys.”¹⁸⁴ For FY 2006, the total amount paid to the private attorneys was approximately \$380,000. “The projected number of cases to be completed in 2007 is about 2,000.”¹⁸⁵ Although the program maintains a list of lawyers who do Judicare work, a client “may choose any lawyer in the Judicare service area, as long as the lawyer will accept Judicare payment.”¹⁸⁶

The program has eight staff attorneys, “who provide information and education” to clients, provide “back-up assistance to private attorneys” (primarily “up-to-date information on legal theories, research and new decisions” in specialized areas of law),¹⁸⁷ “operate a telephone help line and represent clients in some cases.”¹⁸⁸ “Staff attorneys in both the program’s Indian Law Office and Civil Unit represent eligible Native American clients as do private attorneys and lay advocates on the Judicare panel. Staff attorneys and private attorneys also work with Hmong individuals and group clients.”¹⁸⁹

Private attorneys receive \$25 for an initial client consultation and are paid \$45 an hour for work thereafter, about one-third of the average hourly rate (\$133) identified in a Wisconsin Bar survey.¹⁹⁰ There are case caps, e.g., \$900 in most cases.¹⁹¹ “Upon a showing of good cause on a case-by-case basis,” the cap may be “waived up to \$1,800.”¹⁹²

cases. 2005 Grant S2006 Site Visit Evaluation by Wisconsin Trust Account Foundation (2006) (“WTAF Evaluation”).

¹⁸³ WTAF Evaluation, *supra* note 182.

¹⁸⁴ *Id.* at 185.

¹⁸⁵ Proposed 2007 Private Attorney Involvement (PAI) Plan for Wisconsin Judicare, Inc. (“Proposed 2007 PAI Plan”) According to the Executive Director, this proposed plan is “very similar to plans for previous years.” The proposed plan envisions reductions in program funding. The numbers of clients served were: 2004: 3,025; 2003: 3,293; and 2002: 2,212. “Welcome to Wisconsin Judicare, Inc.,” a program pamphlet (“Wisconsin Judicare Program Pamphlet”).

¹⁸⁶ Wisconsin Judicare Program Pamphlet, *supra* note 185.

¹⁸⁷ *Id.*

¹⁸⁸ Executive Director’s Letter, *supra* note 180.

¹⁸⁹ Proposed 2007 PAI Plan, *supra* note 185.

¹⁹⁰ *Id.*; Executive Director’s Letter, *supra* note 180. The hourly rate for travel is \$16 an hour. Proposed 2007 PAI Plan, *supra* note 185.

¹⁹¹ The schedule is Appendix 9.

¹⁹² See fee schedule, Appendix 9.

There are two eligibility determinations: 1) initial eligibility for a consultation with a lawyer, based on financial, geographical, and “case coverage” qualifications, and 2) “extended service” eligibility, based on the program’s case priorities and the availability of funding. The program conducts regular legal needs assessments to establish and revise its priorities.¹⁹³ The program’s current pamphlet states: “Cases involving bankruptcy, social security and SSI, family law, health, housing, income maintenance, wills, and Indian law will be reviewed for approval or denial on an individual basis.”¹⁹⁴

The program has a toll-free phone number and an outreach strategy that relies in substantial part on tribal offices and state social services agencies throughout its service area.¹⁹⁵

The program executive director says:

Outreach partners are provided with our Financial Eligibility Handbooks. They are provided with the same guidelines as our office intake staff for use in making eligibility determinations. About half of our applications are made through the outreach partners. These partners publicize our program and also serve to disseminate legal information through brochures on legal subjects which are furnished by us. The partners do not receive any fees for their services but may request reimbursement of postage.¹⁹⁶

In addition, “Judicare attorneys hold publicized informal legal education and advice sessions in a ‘coffee shop’ atmosphere in various public meeting spaces.”¹⁹⁷

Clients can take one of several pathways to services, for example:

¹⁹³ Proposed 2007 PAI Plan, *supra* note 185.

¹⁹⁴ Wisconsin Judicare Program Pamphlet, *supra* note 185. A more detailed list of the program’s “Priorities Based on the Most Critical Legal Needs” lists problems/services in this order: 1) provision of “counsel and advice, brief services and referrals;” 2) “acquisition/retention of housing;” 3) “safety and stability” of “populations with special vulnerabilities,” including “elderly, diverse, disabled, and immigrant populations;” 4) “economic security” #1 (including public benefits cases), and “employment;” 5) “economic security” #2, “consumer protection,” with a sublist that includes bankruptcy and collection cases; 6) “safety and stability of families” #1, with a sublist of domestic violence and family law cases; 7) “safety and stability of families” #2, access-to-health care cases; and 8) “safety and stability of families” #3, access-to-education cases. *Id.*

¹⁹⁵ “These partners typically are county or tribal departments on aging, community action programs, county and tribal social services departments and departments of aging.” Executive Director’s Letter.

¹⁹⁶ *Id.*

¹⁹⁷ WTAF Evaluation, *supra* note 185.

1) An outreach agency or Judicare intake staff (by phone or mail) establishes consultation eligibility; the client meets with a participating lawyer (showing his Judicare card to demonstrate financial eligibility); the lawyer consults with the client for up to an hour; and if the lawyer believes the matter requires full case services and the Judicare program approves those services (based, in part, on a “case acceptance schedule”), the lawyer provides the services.

2) A Judicare program intake worker establishes consultation eligibility (by phone or mail); the worker refers the client to a private attorney for consultation or schedules the client for a Judicare staff consultation (in person or by phone); in the latter instance, the Judicare staff attorney provides the consultation and may thereafter refer the client to a private lawyer for extended services.

3) The person meets with any attorney in the service area; the client calls Judicare and established financial eligibility; the attorney can consult with the client up to half an hour without prior Judicare approval, and up to one hour with phone call approval from Judicare staff; and the attorney can ask for full case coverage by sending in a written request on a Judicare form. In emergencies, the lawyer can obtain telephone approval, followed by a written request for coverage.

Once a person is found to be eligible, he or she is given a Judicare card. The Executive Director explains: “Judicare originated around the same time as Medicare. It was thought at the time that providing a client with a card similar to a Medicare card would take away the stigma of being a recipient of low income legal services.”

With the help of “a list of participating attorneys in the client’s county,” the client chooses a lawyer. The client can use the card for two purposes: “to meet with [the] attorney for a brief consultation on any civil legal subject which is not restricted by [the program’s funding sources];” and to “request the attorney to apply for coverage of an extended case.” In the latter instance, the lawyer sends or faxes the application to the program’s office, and it determines whether “the case is within [the] priorities, and whether it can be covered under [the program’s] resources.”¹⁹⁸

In 2007, one goal of the program will be to provide more extensive consultations—up to one hour.¹⁹⁹

¹⁹⁸ Executive Director’s Letter, *supra* note 180.

¹⁹⁹ Proposed 2007 PAI Plan, *supra* note 185.

In 2005, among the 1740 cases in which the program provided legal assistance were the following, organized by prevalence of legal problem: 1) *family*: 787 (including 388 divorce, separation, and annulment; 239 custody and visitation; and 55 support); 2) *consumer*: 290 (including 222 bankruptcy and debtor relief; and 25 collection, repossession, collection, and garnishment); 3) *housing*: 221 (including 154 private landlord-tenant; 27 homeownership and real property; and 24 federally subsidized housing); 4) *income maintenance*: 194 (including 157 SSI); 5) *advanced directives, wills, and estates*: 72; 5) *employment*: 48 (including 43 wage claims); and 6) a variety of other cases, e.g., *licenses* (26), *Indian/tribal law* (20), *individual rights* (18), *health* (12), *juvenile* (11), and *education* (9).²⁰⁰

To get paid for the half hour or hour consultation, the attorney sends a request for payment of fees to Judicare and they are paid. For extended cases, after the attorney has received approval from Judicare, he or she proceeds with the case, and bills Judicare for the case when the legal services are completed. In the final billing, the lawyers itemize the services they provided by time increments and describe the case and its disposition. In some cases, attorneys must also submit a copy of the final order or decree.²⁰¹

The program recruits private lawyers in a variety of ways: 1) presentations by staff attorneys at county bar association meetings; 2) “free or low cost seminars,” e.g., a recent program “at Lambeau field” (the home of the Green Bay Packers), which was “very well attended,” and an “anticipated” program that will be “held at a dinner theater and will offer a package of the seminar, dinner and a play”; 3) distribution, including at meetings, of “an informational pamphlet and brochure”; 4) targeted solicitations of recent law school graduates; 5) mailings to bar association members in the service area; and 6) ads in the materials for the state bar convention. The Executive Director says the first and second methods are the most successful.²⁰²

If the program cannot provide the extended service that the client needs, it refers the client to the lawyer referral service of the state bar, another appropriate legal services provider, or attorneys who handle that type of case in the client’s community. The program plans a “more

²⁰⁰ Wisconsin Judicare 2005 CSR Report.

²⁰¹ Proposed 2007 PAI Plan, *supra* note 185.

²⁰² *Id.*; Interview of Executive Director.

focused referral” system that “will direct clients to local attorneys who handle the particular legal problem in their community.”²⁰³

The program’s conflict-of-interests policy prohibits “a staff attorney from representing an individual when a Judicare participating attorney represents the opposing side.”

As part of quality control, the program has a “tickler” system, prompting staff to send “customized letters” to applicants at 45 day and 60 day intervals “if no request for coverage or other documentation of legal service has been received.” There also is a client grievance procedure.

Other quality control measures include “[d]istribution of a Participating Attorney Handbook to each volunteer attorney;” “continuing legal education seminars;” and the availability of staff to consult on problems within the areas of their expertise. At the end of each case, the program also sends a “survey” to the client. They generally indicate a “high degree of satisfaction” with the representation.

The program also has a computerized case management system that, among other things, “tracks the estimated fees for approved cases,” information that “is used to calculate the cost of the caseload and make projections for determining the number of cases that can be accepted.”²⁰⁴

iii. Program evaluation: In 1972, the American Bar Foundation published *Wisconsin Judicare, a Preliminary Appraisal*, by Samuel Brakel. This interim evaluation of the Wisconsin program was part of a more comprehensive evaluation of Judicare as a method of delivering legal services to the poor.²⁰⁵ In introduction, Brakel said:

The main Judicare experience in this country has been Wisconsin's, operating since 1966 and covering 28 mostly rural and sparsely settled counties with a total population of 600,000. Since it covers the largest area with the largest total and the largest eligible population, and has been in operation the longest, the Wisconsin program is the primary focus of this study.²⁰⁶

²⁰³ Proposed 2007 PAI Plan, *supra* note 185.

²⁰⁴ *Id.* The program also has outreach and specialized service projects, including “Legal Grounds Wisconsin,” through which attorneys provide legal information and advice in a coffeehouse; a “Legal Helpline;” a “Low Income Taxpayer Clinic;” a pro se litigant assistance project; a domestic-violence prevention project; and an “Indian Law Office.” Wisconsin Judicare Program Pamphlet, *supra* note 185.

²⁰⁵ In 1974, the American Bar Foundation published *Judicare: Public Funds, Private Lawyers, and Poor People*, by Samuel Brakel. This was the more comprehensive assessment.

²⁰⁶ Samuel Brakel, *Wisconsin Judicare, a Preliminary Appraisal* (American Bar Foundation 1972) (“Wisconsin Judicare Evaluation”), at 3.

Based on his interim evaluation, Brakel came to the following tentative conclusions:

- Eligible people in the service area knew about the program. The “diversity” of ways in which people learned about the program, based in large part on its diversified intake system, was one of its “strengths.”²⁰⁷
- The fact social services offices performed intake and card-dispensing roles did not screen out unsophisticated poor people²⁰⁸ or deter poor people from participating.²⁰⁹
- The fact that poor people could obtain cards in advance of a legal problem, for future use, had largely “salutary” effects, e.g., no delay when a legal problem arose, greater security (many “cardholders...felt ‘more secure,’ ‘more confident’ in their day-to-day dealings...not having to let things be when they go wrong”). However, some people worried that this stirred up legal problems unnecessarily.²¹⁰
- There was “marked unevenness” in the geographical distribution of cards among counties, but not within counties themselves, in significant part because of differing “attitudes and practices” of local lawyers towards Judicare. On the one hand, “there is a real choice of lawyers, that [clients] often exercise it meaningfully, and ...this is an important facet of the Judicare performance.”²¹¹ On the other hand, lawyers can limit choice by refusing Judicare cases. Of 28 lawyers who were interviewed, 16 said they had refused at least one Judicare case because, in descending order of frequency: 1) conflicts of interest; 2) non-meritorious claims; 3) too busy; 4) problem “nonlegal;” 5) “weakness” of claim; and 6) Judicare does not pay enough.²¹² However, of the total of 40 cases (involving 37 clients), in 35 cases, the first lawyer

²⁰⁷ Wisconsin Judicare Evaluation, *supra* note 206, at 21. However, a number of lawyers who expressed views said they thought the Judicare Program administrators should do more to publicize the program. *Id.* at 26-27.

²⁰⁸ *Id.* at 35.

²⁰⁹ *Id.* at 43. “In sum, the use of welfare and CAP offices appears to be a sensible and workable aspect of Judicare. Neither psychological nor physical factors appear to depress application to any significant degree. In fact, some of the card-issuing agencies overcome these factors by way of outreach to physically and psychologically isolated poor people. Reservations about card-issuing agencies are usually directed toward specific personalities in an agency, and the variety of alternatives serves to blunt the potential negative consequences of such situations.” *Id.*

²¹⁰ *Id.* at 46.

²¹¹ *Id.* at 52.

²¹² *Id.* at 57-58.

the client contacted took the case.²¹³ Of these 37 clients, “26 said they would go back to the same lawyer, 5 said they would not, and the remaining 6 were ambivalent.”²¹⁴

- During 1966-71, there were approximately 12,500 Judicare cases. A number of law firms handled large numbers of cases: eight: 100 or more cases; six: 50-99 cases; seven: 25-49 cases; nine: 10-24 cases; and ten: 0-9 cases.²¹⁵ Given the free choices of clients and lawyers, “[t]he unequal distribution of Judicare cases among the lawyers is a central and inescapable aspect of Judicare.”²¹⁶ “Those lawyers who handled large Judicare caseloads exhibited a much broader view of the functions of Judicare, their role as Judicare lawyers, and the legal needs of the poor than the lawyers who handled relatively few Judicare cases.”²¹⁷ Unsurprisingly, clients “gravitate...toward” the “committed” Judicare lawyers.²¹⁸

- The prevalent types of cases, in descending order of frequency, were: 1) family: approximately 4,180 cases; 2) “miscellaneous” (including “torts, juvenile, misdemeanors, school cases, commitment procedures,” and others): approximately 2,333 cases; 3) consumer and employment (including bankruptcies): approximately 1,684 cases; 4) housing: approximately 703 cases; and 5) administrative: approximately 475 cases.²¹⁹

- Judicare lawyers had few “impact” cases, little “group representation,” and few “appeals.”²²⁰

- There appeared to be high rates of success in Judicare cases, and high degrees of client satisfaction.²²¹

b. Judicare programs in other states: Other states use judicare programs, as part of diversified delivery systems, to provide legal services to the poor. For example, in Minnesota, Legal Services of Northwest Minnesota, Inc. (“LSNM”) provides civil legal services to the residents of 22 northwestern Minnesota counties through a mixed model.²²² The program has three staffed offices. In addition, approximately 230 private attorneys

²¹³ *Id.* at 59.

²¹⁴ *Id.* at 60.

²¹⁵ *Id.* at 69.

²¹⁶ *Id.* at 70.

²¹⁷ *Id.* at 72-73.

²¹⁸ *Id.* at 75.

²¹⁹ *Id.* at 80.

²²⁰ *Id.* at 87-88.

²²¹ *Id.* at 95-108.

²²² See Legal Services of Northwest Minnesota Home Page, <http://www.lsnmlaw.org/>.

participate in the judicare component.²²³ The staffed offices generally handle cases involving complicated poverty or family law issues, while the private attorneys handle a broad range of legal issues.²²⁴

LSNM was created in 1976 in response to the enactment by Congress of The Legal Services Corporation Act in 1974.²²⁵ The program began as a purely Judicare model, in which 57 private attorneys participated.²²⁶ Today, nearly two-thirds of the attorneys practicing in Northwest Minnesota participate in the program.²²⁷ These 230 attorneys, along with those who staff the three legal services offices, provide general legal services to Northwestern Minnesota residents whose household income falls below 125 % of the federal poverty guidelines.²²⁸

Persons seeking legal services visit either a private attorney or one of the three staffed offices.²²⁹ At the consultation the client and the attorney determine if self-help is a potential remedy.²³⁰ If it is not, the client's case is assigned a priority level and then handled accordingly.²³¹ The stated purpose of the priority level assignment is to provide legal services to those cases involving the greatest need.²³² Thus, cases involving food, shelter, and domestic (or child) abuse are generally labeled high priority.²³³ The LSNM reassesses its priorities every five years through surveys sent to court officials, judicare attorneys, social service organizations and other community groups within the Northwestern Minnesota Legal Services area.²³⁴

The Judicare attorneys are paid \$50.00 per hour, with a fee schedule that sets caps for different types of cases.²³⁵

²²³ *Id.*

²²⁴ *Id.* Family law cases comprise the majority of Northwest Minnesota Legal Service's case load. The program also handles many consumer, disability, and housing cases. E-mail from Susan Harvey, Private Attorney Involvement (PAI) coordinator with Legal Services of Northwest Minnesota (March 14, 2007).

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.* Residents total assets must also fall within a designated asset ceiling. *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *Id.* Examples of other cases likely to be labeled high priority include those involving: income maintenance, energy assistance, and Social Security and Medicare issues. *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

In Georgia, the State Bar and the Georgia Legal Services Program co-sponsor the Pro Bono Project, which provides legal services to low-income state residents through a mixed model.²³⁶ The judicare component of the program operates in many Georgia counties, but with funds particularly reserved for nearly 40 counties which are rural, high poverty areas.²³⁷ Each region participating in the judicare program sets its own reduced fee, with fees typically ranging from \$25 to 50/per hour.²³⁸ Attorneys estimate the fee for a matter upon referral of a client, and request prior approval of any work in which the fee will exceed \$300.²³⁹ The Pro Bono Project is funded by the Legal Services Corporation and the United States Department of Justice, as well as by other sources.²⁴⁰ Participating attorneys do not handle criminal cases, traffic offenses, or any case which may generate a fee for the attorney.²⁴¹ The local offices of the Georgia Legal Services Program conduct intake and make referrals to the private attorneys.²⁴² The Pro Bono Project provides participating attorneys with access to a law library and other resources, back-up legal assistance, malpractice insurance for each referred case, and continuing legal educational opportunities.²⁴³ Attorneys are also able to manage their cases through an Internet-based system provided by the State Bar.²⁴⁴

In Virginia, the Southwest Virginia Legal Aid Society, Inc. (SVLAS) provides legal aid to low-income residents of seventeen counties and four cities in the Blue Ridge Mountains of rural southwestern Virginia.²⁴⁵ SVLAS has staff, pro bono, and judicare components. Private attorneys participating in the judicare program are typically referred bankruptcy and family law

²³⁶ The Pro Bono Project, http://www.gabar.org/related_organizations/pro_bono_project/ (last visited March 9, 2007).

²³⁷ Telephone interview of the Director of The Pro Bono Project in Atlanta, Ga. (Feb. 8, 2007).

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Mike Monahan, The Pro Bono Project, *The Georgia Legal Services Program Manual for Private Attorney Involvement*, Dec. 2002, at 12.

²⁴² The Pro Bono Project About the Pro Bono Project, http://www.gabar.org/related_organizations/pro_bono_project/about_the_pro_bono_project/ (last visited March 9, 2007).

²⁴³ *Id.*

²⁴⁴ Telephone interview with Michael L. Monahan, Dir. (Feb. 8, 2007).

²⁴⁵ Southwest Virginia Legal Aid Society Homepage, <http://www.svlas.org/index.htm> (last visited March 9, 2007).

cases.²⁴⁶ SVLAS pays private attorneys \$50 an hour, with a \$500 per case cap, which can be, and often is, waived.²⁴⁷ The staff conduct client intake through a Centralized Intake Unit, assess the cases, establish eligibility, and refer clients to participating private attorneys.²⁴⁸

2. International judicare programs

In most industrialized nations, the judicare model is the dominant legal services delivery system. One participant, summarizing the proceedings at a symposium on international legal services in 1993 (at the University of Maryland School of Law), said: “The primary delivery system in other countries or provinces reviewed is a ‘judicare’ system of private attorneys compensated at a reduced fee by a public agency or bar association administering public funds. Between twenty-five to fifty percent of the private bar are involved in providing such services in these countries.”²⁴⁹

Legal services in England are provided to citizens through a mixed-model involving a judicare component. However, recently, the model has added a substantially enhanced staff component (the English equivalent) to the mix.

Community Legal Services (“CLS”) is a network of organizations that provide information, advice and other assistance to help people deal with their civil legal problems. To receive legal help, citizens are directed to the CLS website where they can find a list of local legal advice centers.²⁵⁰ At each center, a citizen can get more information on the variety of different legal services provided, some free or low-cost, and can apply for legal aid (legal services provided for free to low-income citizens).²⁵¹ The CLS Fund, administered by the Legal Services Commission (“LSC”), provides the money to pay for the legal aid services.²⁵²

²⁴⁶ Telephone interview with Larry T. Harley, Executive Director, Southwest Virginia Legal Aid Society in Marion, Va. (Mar. 5, 2007).

²⁴⁷ *Id.*

²⁴⁸ *Id.*; see also Southwest Virginia Legal Aid Society Homepage, <http://www.svlas.org/index.htm> (follow “How to Apply” hyperlink; then follow “Click Here to Learn How to Apply” hyperlink).

²⁴⁹ Robert J. Rhudy, *Comparing Legal Services to the Poor in the United States to the Poor in Other Countries*, 5 MD. J. CONTEMP. LEGAL ISSUES 223, 241 (1994). He was referring to the fact that judicare is the predominant, or a major part of, legal aid for the poor in France, Germany, Great Britain, Japan, Israel, Australia, South Africa, and the Canadian provinces of Alberta, Ontario, and New Brunswick, among other countries.

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

Additional representation, including in court, is provided by solicitors in private practice and law centres, among others. The LSC contracts with law firms to provide the private services. A person chooses a law firm, a lawyer from the firm interviews the person and determines that the person is financially eligible, the lawyer then determines whether the person's claim has sufficient merit (is in the "public interest") to proceed. The issue is whether there is a reasonable chance of success. If the lawyer believes there is, the lawyer asks the LSC for permission to proceed, usually by email. The LSC makes the decision, but the person, if refused service, can ask an ombudsman to review the LSC decision.²⁵³

The solicitors are paid pursuant to a schedule contained in the LSC-Law firm contract. Although not-for-profit organizations now provide a significant amount of the legal aid in England, the substantial majority of "acts of assistance" was provided by solicitors in 2005-06, 449,890 out of 708,510, or 64%.²⁵⁴

The English system requires clients to contribute to the costs of representation to the extent they can.²⁵⁵ Based on the financial information given in each legal aid client's application, the LSC determines if and how much each client must contribute.²⁵⁶ The LSC is mandated by statute to recover some of the money it has spent on a case where someone gains or keeps property or money.²⁵⁷

Scotland also provides legal aid to its low-income citizens and also requires those receiving legal aid and winning or keeping money or property to pay back some of the costs' of litigation.²⁵⁸ The Scottish Legal Aid Board ("SLAB") pays private solicitors to provide advice and assistance to indigents in civil matters, including divorce, child custody, personal injury, welfare rights, immigration, and asylum matters, among others.²⁵⁹ The legal assistance includes

²⁵³ Interview of LSC official on April 20, 2007.

²⁵⁴ Information provided by LSC official.

²⁵⁵ Legal Services Commission: Paying for Your Legal Aid, *available at* http://www.legalservices.gov.uk/docs/cls_main/Paying_for_your_Legal_Aid.pdf (last visited April 17, 2007).

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ Scottish Legal Aid Board Online, *available at* http://www.slab.org.uk/getting_legal_help/pdf/civil_info_for_applicants_sept_03.pdf (last visited April 15, 2007). In addition, losing clients may have to pay the costs of his opponent. *Id.*

²⁵⁹ Scottish Legal Aid Board Online, *available at* http://www.slab.org.uk/getting_legal_help/index.html (last visited April 15, 2007).

representation by a solicitor in court, referred to as “assistance by way of representation” (“ABWOR”).²⁶⁰ Applicants, depending on their financial circumstances, may have to contribute to the fee.²⁶¹

SLAB determines which cases qualify for legal aid and in doing so, must follow rules set down by Parliament.²⁶² To be granted civil legal aid, all of the following tests must be met by the applicant: (1) the applicants must qualify financially; (2) their claims must be supported by “probable cause” (a merits test); (3) it must be reasonable, under all of the circumstances, to provide legal aid;²⁶³ and (4) the applicant must not have other available financial resources that he or she could use to retain counsel.²⁶⁴

Those seeking services can call the Legal Aid Helpline or visit Scotland’s Legal Aid website at www.slab.org.uk. These sources provide information about local solicitors.²⁶⁵ It is through these local solicitors that an interested citizen must apply for legal aid. Once SLAB receives an application for legal aid from a solicitor, it will notify the opponent in that case.²⁶⁶ The opponent of someone who has applied for civil legal aid has the right to object to the application for, or grant of, civil legal aid.²⁶⁷ SLAB will consider the opponent’s objections and, if necessary, investigate further.²⁶⁸ If SLAB refuses to grant legal aid to an applicant, they will explain their reasoning and an applicant then has the right to review the decision and the applicant’s solicitor may be able to get judicial review of the decision as well.²⁶⁹ If SLAB grants legal aid, they will write to the applicant and explain any conditions they have set, for example if

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² Scottish Legal Aid Board Online, *available at* http://www.slab.org.uk/getting_legal_help/pdf/civil_info_for_applicants_sept_03.pdf (last visited April 15, 2007).

²⁶³ *Id.* In considering whether it is reasonable, SLAB will consider, for example, whether an applicant’s prospects of winning or defending the action are only poor or fair – in these circumstances, an applicant may not receive legal aid. *Id.* SLAB will also consider whether an applicant is using the right court and whether an applicant has fully considered other ways of resolving the problem, short of court action. *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.* SLAB will not notify the opponent if the solicitor asks them not to, or they decide, based on the information given in the application, that it is not appropriate to do so. *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.* An applicant can always apply again. *Id.*

they require the applicant to make a contribution to the fee.²⁷⁰ If the applicant wishes to proceed, he must then instruct his solicitor to do so.²⁷¹

In addition to the services provided by SLAB, free advice is available in Scotland from various organizations, such as the Citizens Advice Bureaux or Money Advice Centres.²⁷²

In Ontario, Canada, the government provides civil legal aid through a mixed model, established through the Ontario Legal Aid Plan (“OLAP”), which has three components: the certificate, community clinic, and duty counsel programs.²⁷³ The certificate program is the major component.²⁷⁴ The Legal Aid Act divides the province of Ontario into 47 districts and each district is administered by an area director, recruited by the local bar.²⁷⁵ The Legal Aid Act also requires the Plan to establish several panels of local lawyers in each district who have agreed to do certificate work, act as duty counsel, or give general legal advice.²⁷⁶ Any member of the bar may register on one or more panels.²⁷⁷

Low-income people seeking legal services in Ontario can go to any one of the local district offices and apply for Legal Aid Services.²⁷⁸ In that office, a staff member determines the applicant’s eligibility pursuant to a financial formula that considers the applicant’s income, assets, and financial needs.²⁷⁹ If the office finds the applicant to be eligible, it gives the applicant a certificate entitling the applicant to specified legal services.²⁸⁰ The applicant may present the certificate to any lawyer who is a member of one of the local legal aid panels.²⁸¹ The lawyer

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ Report of the Ontario Legal Aid Review: A Blueprint for Publicly Funded Legal Services (1996), <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/olar/ch3.asp>.

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ Legal Aid Ontario, *available at* <http://www.legalaid.on.ca/en/Getting/faq.asp#where> (last visited April 15, 2007).

²⁷⁹ Report of the Ontario Legal Aid Review: A Blueprint for Publicly Funded Legal Services (1996), <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/olar/ch3.asp>. For a detailed description of the eligibility tests and requirements *see* Legal Aid Ontario, <http://www.legalaid.on.ca/en/getting/Financial.asp>.

²⁸⁰ Report of the Ontario Legal Aid Review: A Blueprint for Publicly Funded Legal Services (1996), <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/olar/ch3.asp>.

²⁸¹ *Id.*

may refuse to take on a legal aid case even though she is a member.²⁸² However, most legal aid clients have little difficulty finding a lawyer to take their certificate.²⁸³ Once the certificate is accepted by a lawyer, the lawyer provides the authorized services and bills OLAP according to a “tariff” schedule.²⁸⁴ OLAP reviews the bill and pays the lawyer accordingly.²⁸⁵ Additionally, OLAP requires lawyers to fill out post-payment questionnaires to ensure that accounts paid through the “Legal Aid Online” are valid and have been properly billed.²⁸⁶

Legal Aid tries to ensure adequate service to its clients. Most lawyers who accept certificates are experienced.²⁸⁷ In 1996, 45 % of all fees paid to lawyers went to those who had 12 or more years of experience, and an additional 39 % went to lawyers who had between 4-12 years of experience.²⁸⁸ Lawyers interested in doing legal aid work must meet standards, including specialization requirements, set by the OLAP.²⁸⁹ OLAP also provides a mentoring program for participating lawyers.²⁹⁰

Interestingly, just as there has been movement in this country to diversify the still overwhelmingly staff model for indigent legal services, there has been movement in judicare systems to diversify that model by adding staff-like elements to it. These reforms have been motivated by escalating legal aid budgets, produced by demand-driven eligibility criteria, and the desire to add poverty law specialists to the large numbers of private lawyers who provide judicare services.

In Great Britain, for example, Parliament enacted a law, effective in 1999, which restricts eligibility for legal aid, authorizes the Lord Chancellor to establish service priorities, provides quality control measures. It also created the Legal Services Commission, described above, to administer the Community Legal Service fund, among other duties. As noted above, the Commission is authorized to contract with “lawyers in private practice, salaried lawyers and

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.* See Legal Aid Ontario, http://www.legalaid.on.ca/en/info/panel_standards.asp for more detailed information on the standards required of lawyers.

²⁹⁰ Report of the Ontario Legal Aid Review: A Blueprint for Publicly Funded Legal Services (1996), <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/olar/ch3.asp>

paralegals in the not-for-profit sector, and non-lawyer agencies such as advice centers.”²⁹¹ One commentator summarizes the impact of the law:

There has already been a huge drop in the number of solicitors in private practice who are now able to offer legally-aided services: from 11,000 last year to 5000 this year. Though the 5000 who remain did in fact provide 80% of legal aid services, it is nevertheless acknowledged that there has been a significant decrease in the amount, and the geographical availability, of legal aid provided through private practice. One of the aims of the new system is that that gap will be filled by the Community Legal Service Partnerships, which will bring in other funders and other suppliers. The LSC is also itself pioneering new models of service delivery to try to meet some of these gaps, such as second-tier expert advisers, particularly in areas such as immigration and human rights where local expertise may be lacking, and the provision of telephone advice services. It is too early to say whether these schemes are working, either in their own terms, or in terms of filling gaps in supply.²⁹²

The Lord Chancellor’s top priorities are “child protection cases and cases where a client risks losing life or liberty.” Next, “high priority” is “given to other child welfare cases, domestic violence cases, cases alleging serious wrong-doing or breaches of human rights by public bodies, and social welfare cases, including housing proceedings and advice about employment rights, social security entitlements, and debt.” Recently, other matters were added, including asylum cases, and “mental health, community care, and other public law cases, particularly those involving claims under the Human Rights Act.”²⁹³

The staffed organizations that now are providing legal services to the poor in England include Citizens Advice Bureaux, Law Centers, and many independent advice centers.²⁹⁴ All of these services meet the same quality standards set by the LSC and required of solicitors enrolled in England’s judicare component of legal services.²⁹⁵

The Ontario, Canada legal aid program is also adding staff components. One commentator described Ontario’s legal aid program in the mid-1990s: “We had open-ended funding that was demand-driven. There was no cap on our budget. Essentially, if a person was

²⁹¹ Anne Owers, *Eleventh Annual Philip D. Reed Memorial Issue Partnerships Across Borders: A Global Forum On Access To Justice April 6-8, 2000: Essay Public Provision Of Legal Services In The United Kingdom: A New Dawn?* 24 FORDHAM INT’L L.J. 143, 147 (2000).

²⁹² *Id.* at 147-48

²⁹³ *Id.* at 148-49.

²⁹⁴ Community Legal Services Direct, *available at* <http://www.clsdirect.org.uk/about/index.jsp?lang=en> (last visited April 17, 2007).

²⁹⁵ *Id.*

eligible for legal aid, they were issued a certificate... Services were delivered, at least for criminal and family law, almost exclusively by the private bar through a classic judicare program.”²⁹⁶ A budgetary crisis resulted in major reductions in funding and “the transfer of administration for the program from the Law Society of Ontario to a new independent statutory agency modeled roughly on the British Legal Aid Board.”²⁹⁷ The crisis also produced changes in the delivery system.

Our delivery models have been reconfigured quite significantly as a result of our new funding restrictions. Whereas formerly our family services and non-poverty civil services were delivered by way of judicare, we have now opened up a series of staff offices. We have significantly expanded our duty counsel or duty solicitor program, and we are also beginning to work more closely with community agencies, the effect of which will be to decentralize the provision of summary legal advice and information out into the community.

Other consequences of our funding restrictions are very strict financial eligibility rules, very strict priority rules, and very strict limits on the amounts of money that our judicare lawyers can bill Legal Aid. Essentially, we have gone from a completely open-ended system to one which is now very heavily managed in just about every respect.²⁹⁸

Similarly, for many years in South Africa, “the main vehicle for the delivery of access to justice for the poor in South Africa has been the Legal Aid Board, which has opted for a judicare

²⁹⁶ *Eleventh Annual Philip D. Reed Memorial Issue Partnerships Across Borders: A Global Forum On Access To Justice, Roundtable: Funding Strategies*, 24 *FORDHAM INT’L L.J.* 254, 255 (2000) (Mr. Thomas speaking).

²⁹⁷ *Id.*

²⁹⁸ *Id.* at 256 (Mr. Thomas speaking). Mr. Thomas summarized lessons “we have learned” from this experience, which mirror lessons that legal services leaders in this country have learned since the development of government-funded legal aid programs over 40 years ago. 1) Judicare should operate on “a fixed budget,” with good management. 2) Supporters of legal services must develop “political allegiances with the private bar, the judiciary, and...government.” It was a “major advantage” for the judicare program that there is “a wide constituency of lawyers ready to argue in favor of legal aid funding.” The “down side,” however, is that they are “resistant to any move away from a classic judicare program, so we struggled to open up even the few staff offices that we have.” 3) It is “difficult to argue in favor of civil legal aid funding on the basis of promoting access to justice alone.” Proponents must stress also “instrumental benefits to providing civil legal aid in terms of improved efficiency of the courts, ...the importance of maintaining family integrity, [and] promoting services to victims of domestic violence, and also the importance of legal representation in promoting self-sufficiency of families...” 4) It also is “extraordinarily important to assess and identify client needs as early as possible and as well as possible in order to direct people to the most cost-effective service provision.” *Id.* at 256-57.

model, since its inception.”²⁹⁹ Under that system, which still exists, Legal Aid officers interview applicants; determine whether they are financially eligible and whether their case is one covered by the program. (Many civil legal problems are covered, but divorce actions comprise the overwhelming majority of cases for which judicare fees are paid.) Legal aid officers also conduct a “merits” assessment to determine whether “there is merit in the case and ...a reasonable prospect of success and recovery.”³⁰⁰ If the applicant and case qualify, the applicant is “referred to a practising attorney or a public defender's office or Board law clinic.”³⁰¹ (The clinics are staffed primarily by “prospective attorneys,” working under the supervision of an attorney.)³⁰² Private lawyers are paid pursuant to a fee schedule that has “fixed tariffs.”³⁰³

However, recently in South Africa, the Legal Aid Board has funded “justice centers,” which “act as one-stop legal aid shops.”³⁰⁴ These centers are the rough equivalents of staffed legal services programs in this country. “The centers incorporate the different constituents of the present legal aid scheme under one roof: qualified attorneys and advocates, candidate-attorney interns, paralegals, and administrative staff.”³⁰⁵ Now, “[l]egal aid officers only refer matters to private counsel where the justice center cannot handle a case.”³⁰⁶ This development appears to have been driven, in major part, by cost (lower for the justice centers), avoidance of referrals, and the more comprehensive nature of the center’s services.³⁰⁷

²⁹⁹ David J. McQuoid-Mason, *Eleventh Annual Philip D. Reed Memorial Issue Partnerships Across Borders: A Global Forum On Access To Justice April 6-8, 2000: Essay The Delivery Of Civil Legal Aid Services In South Africa*, 24 *FORDHAM INT'L L.J.* 111, 117 (2000).

³⁰⁰ *Id.* at 119.

³⁰¹ *Id.* at 120.

³⁰² *Id.* at 123.

³⁰³ *Id.* at 120.

³⁰⁴ *Id.* at 120.

³⁰⁵ *Id.* at 125.

³⁰⁶ *Id.* at 125-26.

³⁰⁷ *Id.* at 126-27.

These international developments mirror the development in this country of a more nuanced continuum of service, from self-help centers, online services, and discrete task representation, through full-service representation in contested cases. They also represent the effort of service models dominated by one delivery mechanism to diversify and balance that model to obtain the full benefits of the international equivalents of private attorney and staff components.

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