



D I S T R I C T O F C O L U M B I A B A R
Family Law Section

**SUMMARY D.C. BAR FAMILY LAW SECTION
TESTIMONY ON
D.C. FAMILY COURT LEGISLATION**

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The Steering Committee of the Family Law Section has been invited to testify on the draft legislation which would reform the Family Division of Superior Court. The testimony was prepared primarily by Margaret J. McKinney, co-chair of the Steering Committee, with the assistance of Garrett Lee and other Steering Committee members. Input was received from the entire Steering Committee and at least eight other members of the Section. The Family Law Section has concerns about the proposed legislation. Additionally, the Section supports the Superior Court's proposed changes to the legislation. The Section is most concerned about the legislation mandating a lengthy judicial assignment to the "Family Court" and our testimony focuses primarily on that issue. We are concerned about judicial fatigue given the complex and emotionally challenging nature of family cases. We do not believe Congress should mandate the length of a judge's assignment to the Family Court or that Congress should mandate the conditions under which a judge may be assigned to the Family Court. We do not believe that the Court should have no discretion with respect to whether the 4,500 open abuse and neglect cases are transferred wholesale into the Family Court. We believe the Court should have discretion to maintain the assignment of cases to judges outside the Family Court if it would serve the best interest of the child. We believe Congress should not mandate a minimum and inflexible number of judges to be assigned to the Family Court. We believe it is important for the Chief Judge to retain the discretion to shift judicial resources as necessary to address changes in the needs of the court and the community as a whole. If the legislation in its final form requires a mandatory minimum number of judges to be assigned to the Family Court, the Section supports an increase in the total number of judges in the Superior Court in order to avoid continual vacancies and a shortage of judicial resources. We support the Court's request for consistency in the powers and role of magistrate judges and hearing commissioners. We support the legislation's provisions for a new computer system, continual education and training of Family Court judicial officers and personnel, increased alternative dispute resolution, practice standards for court-appointed attorneys, permissive extension of a judge's assignment to the Family Court, the use of magistrate judges, on-site coordination with other government agencies necessary to the efficient management of abuse and neglect cases, a social service liaison, and annual reporting by the Family Court. We believe it is crucial that Congress also provide the funding necessary to support these mandates and the Court's proposed reforms to the Family Division.

The views expressed herein represent only those of the Family Law Section of the District of Columbia Bar ("Family Law Section") and not those of the D.C. Bar or of its Board of Governors.

**Testimony of the Family Law Section
Of the District of Columbia Bar
Before the Committee on Government Reform
Subcommittee on the District of Columbia**

June 26, 2001

The Family Law Section of the District of Columbia Bar is pleased to submit to this Subcommittee this testimony on the draft District of Columbia Family Court Act of 2001. Our members are attorneys who represent children, parents, grandparents and other caretakers in all types of family law cases, including adoption, divorce, custody, abuse and neglect, child support, paternity and other such proceedings. The Family Law Section of the D.C. Bar represents the most highly respected family lawyers in the D.C. area and some of the best family lawyers in the country. The District of Columbia Bar has approximately 74,000 members. The Family Law Section is comprised of those members of the D.C. Bar practicing family law in Washington, D.C. and neighboring jurisdictions. The views expressed herein represent only those of the Family Law Section of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors.

The reason for the Family Law Section's interest in this legislation is very simple. The Section is wholly comprised of individuals who represent, on a daily basis, the children and families who will be most affected by the proposed legislation. Our collective knowledge and experience regarding D.C. family law, our deep concern for the persons these laws seek to serve and protect, and our unique understanding of the pressures facing the Family Division of the D.C. Superior Court and the judges that labor therein, give the Section an enlightened and valuable perspective on the issues facing the Superior Court today. It is important to state at the

outset that the Family Law Section has always had a strong interest in ensuring that the Family Division of the Superior Court provides the best services that it possibly can to the children and the families of the District of Columbia. The Section has always supported positive and productive movements initiated both inside and outside of the Court to improve its ability to meet the needs of its constituents.

The Family Law Section is grateful to Chairwoman Morella, Representative DeLay, Representative Norton and Representative Davis for including us in the discussions which led to this draft legislation. We appreciate having the opportunity to voice our concerns. We are pleased to see that the present draft keeps the family court within the Superior Court. We view this as the most critical element of any reform plan.

We applaud the sponsors of the legislation for including in the draft bill mandates for a new computer system, continual education and training of Family Court judicial officers and personnel, increased provisions for alternative dispute resolution, practice standards for court-appointed attorneys, permissive extension of a judge's assignment to the Family Court, the use of specially trained magistrate judges, on-site coordination with other government agencies necessary to the efficient management of abuse and neglect cases, a social service liaison, and annual reporting by the Family Court. It is crucial, however, that Congress also provide the funding necessary to support these mandates.

The Family Law section would like Congress to know that since January, when Chief Judge King, Judge Walton and Judge Josey-Herring assumed their current leadership roles, there have been significant improvements in the functioning of the Family Division of the Superior Court. Chief Judge King added an additional calendar and judge to handle abuse and neglect matters in the Family Division. Judge Walton established working groups that have studied the

Family Division. The working groups include judges, court personnel, children's advocates, local counsel, members of the bar and others. The changes suggested by the working groups would significantly improve the Division. In fact, some of the suggestions from the working groups have already been implemented. All of the calendars in the Family Division are being run much more efficiently and with greater success. We attribute these changes to the dedication and extraordinary efforts of Chief Judge King, Judge Walton, and Judge Josey-Herring, along with all of the judges currently sitting in the various branches of the Family Division.

The Family Law Section has a number of concerns about the proposed legislation. We have conducted an independent analysis of the draft legislation to determine its potential impact upon the children and families we represent in D.C. Superior Court. Day after day, we see the problems faced by children and families, both systemic and societal. We are pleased that the Family Division has received the attention it needs. However, from our perspective there is a significant tension between the desire to implement legislation that would prevent today's improvements from being dismantled by future leaders versus micromanaging the Superior Court in a manner that prevents it from adapting to the needs of the community it serves. We urge Congress to consider the potential unintended consequences of tightly constricting the discretion of the Court to manage its busy dockets, which may inhibit the Court's ability to adapt to the changing needs of this city. As practitioners we want to see continued improvements to the system but we recognize that it is important not to over-legislate the particulars of the Family Court, as addressed more fully below. With strict Congressional oversight, all parties affected by the system will be assured that there will only be forward progress.

I. Length of Judicial Assignments to the Family Court

Aside from the need for ongoing funding, the most important issue in the current draft of this legislation is the length of any mandatory assignment to the Family Court. If Congress intends to mandate the length of a judge's assignment to the Family Court, we urge Congress to provide that the initial assignment to the Family Court is no more than three years, with the opportunity for judges to voluntarily extend the assignment. In taking this position, we are primarily concerned with protecting the humanity of our judges and, thereby, the integrity of our judicial system. It was a life and death issue that brought us to this point and we should not forget that fact in our haste to make improvements to the system. It is imperative that each judge sitting on the Family Court has compassion, tolerance, patience, and the quality of spirit necessary to look at the most difficult family situations day after day and not lose hope or become desensitized.

Congress should be aware that in Maryland, which has a family division system within its Circuit Courts, judges are assigned to the family division for one to two years. In Montgomery County, judges are assigned to the family division for approximately 18 months with voluntary extension of the assignment. The Honorable Louise G. Scrivener, presiding judge of the Montgomery County Circuit Court Family Division, has served three years in the Family Division and will voluntarily rotate out of the Division this summer. Judge Scrivener was a family law practitioner and Domestic Relations Master prior to becoming a judge. She has been a dedicated advocate of children and families throughout her distinguished career. In Prince George's County, Maryland, which has the longest family division assignment in the state of Maryland, judges are assigned to the family division for two years. In the Circuit Court for the City of Baltimore, arguably the only truly "urban" jurisdiction in Maryland, judges have one-

year assignments to the juvenile/abuse and neglect calendars and one-year assignments to the domestic relations calendars, where they preside over divorce, custody, child support/paternity, and domestic violence proceedings.

In order to understand why the Family Law Section recommends that the initial assignment to the Family Court not exceed three years and that the assignment be extended only voluntarily, it is necessary to recognize the difficulties inherent in being a Family Court judge in the District of Columbia. Family cases differ from civil and criminal cases in some very important ways. In civil and criminal cases it is usually the jury who considers the facts, applies the law, and makes the ultimate decision. However, and more importantly, Family Court cases do not have juries—the judge is the sole decision-maker. At the end of the day, a Family Court judge cannot simply turn the case over to the jury and receive a decision. In a Family Court case a judge must listen to whatever evidence is presented, apply his or her knowledge of the law and his or her experience, decide on the issues, and often write detailed findings of fact to justify the decision. Every decision made by a Family Court judge will irrevocably alter the lives of children and their families.

Making the Family Court judge's job more difficult, many people in the District of Columbia who are involved in family cases come before the Court without the benefit of an attorney. In divorce, child custody, child support, paternity and domestic violence cases many of the litigants do not have attorneys and have no right to court-appointed counsel. Divorce, child custody, and child support/paternity cases accounted for slightly less than fifty percent (50%) of the approximately 13,000 filings in the Family Division of D.C. Superior Court in fiscal year 2000. That meant 13,000 families entered the Court system that year. In addition, there were more than 3,715 new domestic violence cases filed in the D.C. Domestic Violence Unit in fiscal

year 2000.¹ When one or both parties appear before the court in these cases without an attorney, the judge must protect and, therefore, educate the unrepresented parties in order to ensure a fair hearing. Hearings are protracted in these cases and require more of a judge's patience, tolerance and time. This causes an extreme but delicate tension between the individual needs of the family members and the Court's need to manage its congested docket. Even in cases where all parties are represented by counsel, the judge faces difficulties. The judge must allocate the available time and resources in order to provide those parties ample time to try their cases while also taking into account the needs of those parties waiting in the courtroom. Given very limited time, the judge must balance and manage the docket in order to give all parties their day in court. With overcrowded dockets and many unrepresented parties, this is an extraordinary challenge.

In fiscal year 2000, there were 3,064 juvenile cases, 1,494 abuse and neglect cases, 1,915 mental health/retardation, and 406 adoption cases filed in the Family Division. These cases account for slightly more than fifty percent (50%) of the cases filed (or placed at issue) in the Family Division in fiscal year 2000, with abuse and neglect proceedings accounting for approximately eleven percent (11%) of the total. There are more than 3,000 ongoing abuse and neglect proceedings, in addition to the 1,494 new or reactivated cases. The Office of Corporation Counsel (OCC) is responsible for representing the District of Columbia Government in abuse and neglect cases. These attorneys represent the government's interests in protecting its children throughout the life of the abuse and neglect cases.

In juvenile, abuse and neglect, termination of parental rights, and certain mental health/retardation cases, children and indigent parties have a right to free court-appointed counsel. As with indigent criminal defendants, the right to counsel in these matters is axiomatic. Attorneys are provided and paid for through Court programs, with some *pro bono* attorneys

¹ All Superior Court statistics reported herein are from the 2000 Annual Report, District of Columbia Courts.

provided through other non-profit agencies. In abuse and neglect cases, the child and each of his or her parents has court-appointed counsel. In certain instances foster parents, relative caregivers, and adoptive parents also receive court-appointed counsel. Most of these attorneys are appointed through the Counsel for Child Abuse & Neglect Office (CCAN) in Superior Court, which currently has approximately 275 attorneys on its list of approved counsel. Only approximately four of those attorneys speak Spanish, in a city with thousands of low-income Spanish-speaking residents. Attorneys for juvenile proceedings are appointed through the Criminal Justice Act Office (CJA) in Superior Court or the Public Defender Service (PDS). There are currently fewer than 250 lawyers approved to handle juvenile matters. For some of the same reasons it is difficult to recruit judges to the Family Division, it is difficult to recruit lawyers to represent parents and children in abuse and neglect proceedings and juveniles in delinquency proceedings. In addition to the difficult and frustrating nature of the work, lawyers who represent children and parents through the CCAN and CJA offices are paid only \$50.00 per hour. CCAN lawyers must zealously represent their clients with the knowledge that the fees they will receive for the representation are capped at \$1,100 per case, except in exceptional circumstances. Clearly, there are not enough lawyers to provide quality legal representation to all the individuals in family cases who desperately need it. The Court needs additional funding for the CCAN and CJA offices in order to attract additional quality lawyers to represent children and indigent people. Raising the hourly rate of pay would help the CCAN office find more lawyers willing to take these difficult cases.

Unfortunately, in addition to not having enough lawyers, Family Court judges also see a number of cases where a party or a child has inadequate representation by counsel. In these cases it is the judge who must ensure that the child's best interest and the parent's rights are

protected. This is often a very delicate balancing act for the judge. To further complicate these abuse and neglect cases, the social services agencies involved have been understaffed and overworked. Often, the social service agencies are simply unable to perform their role. We hope that with the new leadership at the Child and Family Services Agency (CFSA), and with better funding, CFSA will have the resources it needs to adequately manage the overwhelming number of abuse and neglect cases in the District.

In family cases, particularly child abuse and neglect cases, the Superior Court judge often must try to assist a child in need without vital information or access to the services necessary to improve the child's situation. Lack of counsel, inadequate counsel, and overworked social workers, often mean there is less evidence available upon which the judge can make these difficult decisions. In these cases the judge begins to perform several roles—not just the role of the decision-maker. The judge may become the investigator, the provider of information as to available services, or the protector of the unrepresented or poorly represented party. The judge must spend significant time explaining the process to the litigants, maintaining control in the courtroom, and assuring that each party receives a full and fair hearing. However, at the end of the day, the responsibility lies with the judge, and he or she must make a decision.

Day after day, Family Court judges see children and families in crisis. But not only do the judges face people in crisis every day, they generally see only the worst cases of family crisis. The “easy” and “simple” cases resolve themselves through mediation or negotiation, often before they even reach the court. Family Court judges often see cases in which one or more of the people involved has a serious mental illness, substance abuse problem, physical limitation, or a combination of the three, and where there is not enough money to support the family let alone provide the services the family truly needs. There is often emotional, physical or

psychological abuse on the part of one or more family members. Sometimes the problems of the family are readily apparent; sometimes the problems are subtle and much time is needed to identify and find a solution to the problems. Often there is no light at the end of the tunnel for the families that come before the Court. One cannot underestimate the emotional and psychological toll these cases take on all the people involved in them—litigants, family members, lawyers, and most importantly the decision-makers, the judges. Family Court judges are charged with making life-altering decisions each day in cases where there is no simple solution to the families' problems and where there is often inadequate information and support from the people who should be informing the judge. This is especially true in this urban jurisdiction where there are such significant problems with substance abuse, poverty and lack of education.

As family lawyers we have some ability to limit the number of these particularly difficult cases we handle at a given time. We try to avoid fatigue by keeping our hours in check and working on cases with varying levels of difficulty and trauma. Many family lawyers choose not to work on abuse cases because they are simply too heart wrenching and stressful—the stakes are too high. Judges have no such luxury. In general, the cases Family Court judges see are before the Court precisely because the problems were too complex or severe for the family members to resolve on their own.

In addition to the emotional and psychological demands of being a Family Court judge, Congress should also consider the practical aspects of the assignment when determining its length. Judges in Superior Court typically preside over cases from approximately 9:30 a.m. to 4:30 p.m. five days per week. Family Court judges typically use the time before 9:30 a.m. and after 4:30 p.m., as well as weekends, to write decisions and issue orders. To sit on a family court docket is to have what amounts to two full-time jobs. After hearing cases all day, judges must

return to their chambers to spend additional time making decisions, writing opinions, issuing orders and performing their administrative duties. The decisions are not easy to make in most cases and judges struggle to find the best possible result for children. We know judges in the Family Division, past and present, who regularly work 12 and 14-hour days, or longer, and weekends in order to keep up with their caseload. Even the most dedicated advocate of children and families could not be expected to maintain such a demanding schedule day after day and year after year.

Judicial fatigue, like fatigue in any area of life, leads to mistakes. Even with all of the improvements called for by this legislation and by the Superior Court reform plan, we fear that judges sitting on the Family Court will become fatigued and desensitized if they are required to stay more than three years. We worry about what could happen if the judge has seen too much misery, when he or she has heard the same story one too many times, and has been drained of the necessary compassion, tolerance, and energy it takes to make wise decisions. The children and families of the District of Columbia need judges who have the time, the resources, and the assistance from other branches of government that the children need. It is primarily for this reason that we hope Congress will provide the funds necessary to implement the planned reforms to Superior Court.

Finally, the children and families of the District of Columbia deserve to have the best and brightest Superior Court Judges sitting in the Family Court. For good reason, many judges hesitate to take an assignment to the Family Division. Requiring by law a specific length of assignment to the Family Court would make it more difficult to recruit qualified judges. Even three years is a long time for a judge to serve in the Family Court. A shorter assignment would encourage more judges to volunteer for the Family Court. For many people, including many

family law practitioners, more than three years on the Family Court bench would be far too long. Five years represents fully one-third of a judge's initial term of appointment--too many to make it an appealing assignment for many judges. Moreover, a five-year assignment would likely eliminate a judge's willingness or ability to return to the Family Court after serving in a different division. The Family Division has benefited greatly from the experience and insight gained by judges who have served in other divisions and returned to the Family Division bringing with them fresh perspectives, new skills, renewed energy and dedication. The Family Division has also benefited from having judges from all backgrounds sitting in the Division. Some of the best Family Division judges had no prior experience in family law. What matters most is not the judge's background, but that the judge has excellent judicial skills, life experience, and a great deal of compassion.

We believe that Congress should not mandate the length of judicial assignments to the Family Court. We believe it would be preferable for the Committee to recommend to the Chief Judge an assignment of two to three years on the Family Court, which can be monitored through Congressional oversight. If Congress feels it necessary to mandate the length of judicial assignments to the Family Court, for all of the reasons set forth above, we strongly recommend that the assignment be no longer than three years.

II. Minimizing the potential negative impact of the proposed legislation.

As stated previously, for family law practitioners there is a significant tension between the desire to implement legislation that would improve the Superior Court and prevent those improvements from being dismantled by future leaders versus micromanaging the Superior Court in a manner that may have a negative impact on the Court and the community it serves. We have analyzed the legislation and we have reviewed the Comments of the Superior Court on

the draft legislation. Our concerns about the legislation arise from our interest in having the best possible judges in the Family Court. The proposed legislation may inhibit the ability of the Chief Judge to ensure that there is a full complement of highly qualified judges in the Family Court and the D.C. Domestic Violence Unit at all times. Limiting the discretion of the Chief Judge to require judges to serve in the Family Court and to remove judges when necessary could cause significant problems. What if there are not enough judges who volunteer for the assignment because of the restrictions in the legislation? What if the best judges do not volunteer? What if after a judge leaves, no other judge volunteers to take his or her seat? It is imperative that the Chief Judge retains the discretion necessary to ensure that the Family Court and the D.C. Domestic Violence Unit have the highly qualified and skilled judges needed to resolve these complicated family cases. From our perspective as family law practitioners, we make the following additional recommendations with respect to the draft legislation:

A. It is imperative that the legislation specifically acknowledges that cases pending in the Domestic Violence Unit will not be required to be transferred to the Family Court. The Domestic Violence Unit was created, after careful study and much hard work, to address the specific needs of families and children touched by the myriad of issues arising from domestic violence. It is important not to create confusion between that Unit and the new Family Court, and to permit cases to move between the two as necessary to best serve the families involved. Again, the Court must be given discretion to address such matters on a case-by-case basis.

B. If the legislation in its final form requires a mandatory minimum number of judges to be assigned to the Family Court, the Family Law Section supports an overall increase in the total number of judges in the Superior Court. We believe it is important for the Chief Judge to retain the discretion to shift judicial resources as necessary to address changes in the

needs of the court and the community as a whole. Just as we believe additional judges should be pulled from the Civil or Criminal divisions when needed in the Family Court, we believe the Chief Judge should have authority to move a Family Court judge to another division if necessary, and if the Family Court can spare the judge. If the Chief Judge does not have discretion to move judges, within reason, between divisions, the Court's ability to meet the needs of the entire D.C. community may be compromised. The Court is already limited by the fact that Superior Court judges are federally appointed, and the length of the confirmation process delays the ability of the Court to fill vacancies. There are currently three vacancies in the Superior Court. The judges expect three more vacancies to occur by the end of this year. There are generally at least two to three vacancies each year. Increasing the number of judges allocated to the Court would allow for each division of the Court, the Family Court, and the Domestic Violence Unit, to remain at maximum strength despite the usual vacancies expected with judges leaving the court.

C. Many abuse and neglect cases are complex and remain open for good reasons. Requiring these cases to be transferred into the Family Court without an assessment of what result would most benefit the child in question is unreasonable and may not serve the child's best interest. We believe the Presiding Judge of the Family Court should have discretion to determine that particular children are best served by leaving their case with a particular judge, even if that judge is not sitting in the Family Court. We believe it is best not to mandate a wholesale transfer of all currently pending abuse and neglect cases to the Family Court but rather to allow discretion in special circumstances. Additionally, we fear that the wholesale transfer of approximately 4,500 abuse and neglect cases into the newly created Family Court without sufficient judicial and court resources would negatively impact the children involved in those cases. Many of the children in the abuse and neglect system have serious emotional,

psychological, and physical limitations that require significant resources and attention. If the new Family Court is inundated by the influx of existing cases, we believe it is highly likely those children will suffer from the lack of individual attention by a judge familiar with their circumstances.

D. We have already outlined the many reasons a judge might not volunteer for or be able to tolerate a long-term assignment to the Family Court, although he or she might be an excellent Family Court judge for several years. The legislation should not require judges to make certifications to the Chief Judge prior to assignment to the Family Court; nor should the removal of a judge from the Family Court require a “finding” that “the retention of the judge in the Family Court is inconsistent with the best interests of the individuals and families who are served by the Family Court.” These certifications and the potential of a public finding are likely to discourage even more judges from volunteering for an assignment to the Family Court. Judges are only human and the Family Court docket is a very demanding assignment. Congress must not strip the Chief Judge of the discretion to quietly make certain decisions without causing his fellow judges public embarrassment. There are many reasons why a judge may need to leave the assignment early. There could be many reasons the Chief Judge would need to remove a judge mid-term. A judge could have a family crisis, become ill, become overwhelmed by the difficult and overcrowded docket, or simply be ill suited for service on the Family Court. If Congress requires a three or five-year assignment, includes requirements for certifications by judges before taking the assignment, and requires findings by the Chief Judge before a judge could be removed (voluntarily or involuntarily) from the Family Court, the Chief Judge may be unable to fill vacancies or remove judges when necessary. This would have a negative impact upon the children and families appearing before the Family Court.

It is our hope that with the planned reforms to the Superior Court and the abuse and neglect system as a whole, the number of abuse and neglect cases in Superior Court will be significantly reduced, which would change the needs of the Family Court. We believe the legislation does not need to restrict the Court's ability to manage family cases as much as the proposed draft would. Since the legislation provides annual reporting by the Chief Judge and significant Congressional oversight, Congress, children's advocates, members of the bar, and the community will have an opportunity to evaluate whether the Family Court is functioning appropriately.

III. Appropriations

If Congress intends to proceed with this legislation, the addition of a provision that specifically authorizes funding of the changes required by the bill is absolutely essential. The substantial changes to Superior Court required by the bill cannot be funded within the Court's current budget. The Family Law Section is aware that if the bill does not contain specific authorization for funding the reforms, the necessary funding may not be available. If funding is not available, the Court will not be able to make many of the necessary changes. If reforms are mandated without proper funding, the families and children of the District will likely be in a worse position than when we started this process.

IV. Conclusion

In conclusion, we would like to thank Congress for shining a light on these very important issues. We recognize the need to improve the handling of abuse and neglect matters in D.C. Superior Court and throughout the system. We believe that as a result of the attention these issues have received, there have already been substantial improvements. We believe the improvements will continue under the watchful eyes of Congress, advocacy groups and the bar.

According to the most recent Annual Report of the District of Columbia Courts, in fiscal year 2000 the Family Division had 29,204 active cases under its jurisdiction. In addition, there were more than 4,675 active domestic violence cases. The open abuse and neglect cases represent approximately thirteen percent (13%) of those 33,879 cases. We realize that these are in fact the most important cases the Court handles. However, the draft legislation would impact all family cases.

It is important for this Subcommittee to understand as it considers legislation that would dramatically affect the entire Family Division exactly what challenges the judges of Superior Court face in handling abuse and neglect cases. In fiscal year 2000, approximately seventy-five percent (75%) of the 1,417 new children who entered the abuse and neglect system in Superior Court were over four years of age; more than fifty-eight percent (58%) were over the age of seven. In order to provide this Committee with a true picture of the abuse and neglect situation in the District of Columbia, I would like to share with you what I observed in just one hour of one day in one of the three abuse and neglect courtrooms in D.C. Superior Court:

On this particular day, the judge was scheduled to hear two trials, two status hearings, and two review hearings. In addition, the trial from the preceding day had to be completed.

When the court called the first trial scheduled at 9:30 that morning, the attorneys and social workers stepped forward. There was an attorney from OCC, a social worker, an attorney for the child (a *guardian ad litem* or GAL), an attorney for the mother, and an attorney for the father. The attorney for the mother was substituting for the attorney who had been appointed by the Court but who had never actually appeared in the case, or returned the phone calls of the father's attorney or the GAL. The substitute attorney had only recently learned of his role in the case. The child was not residing with either parent. The man alleged to be the father of the child

was denying paternity but could not be tested because he was in jail in another jurisdiction. The social worker had not been able to perform her job because the mother, who had previously spent time in a psychiatric hospital, refused to participate in the court-ordered psychological evaluation. Despite the judge's gentle but firm admonishment and warning as to how it might affect the decision as to whether her child returned to her custody, the mother refused to participate saying she had already been evaluated once, she did not have mental problems, and she had to work. Since the trial from the preceding day had to be finished, the case was continued for several weeks. Simply rescheduling the case took 20 minutes of Court time.

As the first case was being rescheduled, the judge received an emergency telephone call from a third party caretaker of a child in the system. After taking the call, the judge learned that the caretaker was about to be evicted from her apartment. The judge tried to calm down the caretaker and asked the Courtroom clerk to call the social worker to give the caretaker assistance.

When the Court called the second trial, present were an attorney for OCC, two social workers, the GAL, the father and his attorney, and the mother. The mother's attorney was not present and the mother had been unable to reach him. He is also her attorney in the case of another child she and the father have in the system. The Court could not proceed without the mother's attorney present. The case was passed by the Court in the hope that the mother's attorney could be located and a new hearing date set. This case was before the court for approximately ten minutes.

The first status hearing took approximately ten minutes. The child in question had been shot in a drive-by shooting two nights before. The mother was in the Superior Court lock-up because she had been arrested the night before. The child's grandmother was the long-time official custodian of the child, but had only just learned of the shooting. The child's condition

was unknown. Present for the status hearing were the attorney from OCC, the grandmother's attorney, the mother's attorney and the GAL. The case was rescheduled for six days later.

The first case called for a review hearing was delayed because the mother's attorney was not present and the father was expected to appear at the hearing but had not arrived. Present in the Courtroom for this review hearing were the GAL, the foster mother and her attorney, the mother, the father's attorney, the father's wife, an adult child of the mother, several social workers, and several witnesses. The case would be called again later in the day.

In the second case called for a review hearing, the facts were devastating but a permanent placement was achieved for the child. The child suffers from sickle cell anemia, but no longer has legal immigration status. The child's father lives in a war-torn third world country. Her parents hoped she would receive better medical treatment in the U.S. She had been living with her mother and an uncle before the uncle was accused of sexually abusing her. Present in the courtroom for the hearing were the attorney for OCC, a court social worker, a CFSA social worker, the GAL, the mother's attorney, the accused uncle's attorney, the father's attorney, the aunt who was the current caretaker and her attorney, the uncle who hoped to become the child's custodian so she could move to the jurisdiction where her mother now lives and works, and the social worker, nurse and art therapist from the local hospital where the child has received treatment for several years. The child's immigration status and need for health insurance were critical issues. There was also an issue of whether the father had consented to an adoption by the accused uncle, and whether he consented to the other uncle having custody. The case was before the Court for 25 minutes before it was clearly established that all the relevant parties consented to the second uncle having custody, that the immigration issue was resolved, and that the child would have health insurance through the uncle. The parties and counsel left the Courtroom to

prepare a consent order for the judge to sign. The case would be called again when the consent order was ready.

As for the trial that started the day before, the attorney from OCC had not finished presenting her evidence to the Court. A total of 15 witnesses were expected to testify. Approximately half of those witnesses had already testified. At issue in the case was the alleged abuse of a teenage mentally retarded child whose mother had put her in the care of a family friend more than 10 years earlier. The child's mother has an alcohol problem and her father has been in and out of jail. The family friend cared for the child until her death at which point her adult child began to care for the mentally retarded child. It is this caretaker who is accused of abuse and neglect. This trial was scheduled to resume at 10:30.

This is what unfolded before one judge, in one hour, on one random day in D.C. Superior Court. These were not even some of the more difficult cases. Imagine, if you would, what the other hours of that day are like and all of the other days that came before and that will certainly follow.

It is admirable that the Committee is willing to tackle this problem. We urge it to tread gently in reforming the Family Division of the Superior Court. Family cases, particularly abuse and neglect cases, are extremely complex. They are intellectually and emotionally challenging for all of the individuals involved. The Court is only one small part of the entire system. Reforming the Court will not solve the underlying societal problems that lead to the abuse and neglect of our city's children, nor will it create more permanent homes for the children in need. A judge can only do so much to protect children and families. Dedicated as they are, the judges cannot prevent abuse and neglect, or create permanent homes for the children affected by it. Until we have adequate mental health services, educational and job training programs, residential

drug and alcohol treatment programs where parents can bring their children, and effective employment programs, we cannot hope to solve this problem.

Respectfully submitted,

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