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JUDICARE FAMILY LAW PILOT PROJECT

Evaluation Supplement

**A Successful Model for Providing Representation by
Lawyers In Private Practice for Low-Income Litigants
in Contested Family Law Cases**

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Summary

The following report is intended as a supplement to the recent Evaluation of the Judicare Family Law Pilot Project by the Administrative Office of the Courts. This report reviews data from the Courts' evaluation, from an earlier evaluation of Maryland's Reduced-Fee Child Custody Project and from Judicare Project grant reports to the Maryland Legal Services Corporation. In addition, this report discusses state-based and national research studies that examine unmet needs of litigants in family law cases and the importance of attorney representation in our adversarial system, particularly in family law cases.

The data and studies consistently show a tremendous unmet need for legal representation by low-income individuals facing contested family law matters. Also demonstrated is the efficacy of the Judicare model as developed and implemented in Maryland to provide meaningful legal representation in an efficient, cost-effective manner in what are often difficult, complex, time-intensive cases. Since the inception of the Judicare Pilot Project, over 2,000 litigants who would have otherwise been unrepresented received expert legal representation by private attorneys compensated at significantly reduced fees through the Judicare Project, and approximately 3,800 individuals benefitted from these services.

Additionally, the Judicare Pilot project is structured in such a way as to successfully leverage pro bono service from attorneys participating in the program. Since the beginning of the Pilot Project, Judicare attorneys have donated more than 4,100 hours of free (i.e., pro bono) service on cases that have exceeded the allowable payment cap on Judicare cases, and by agreeing to accept a pro bono case at the time of the Judicare referral. Assuming a modest average hourly market rate, this pro bono contribution translates into approximately one million dollars of free legal services to low-income Marylanders.

Maryland's staffed legal aid programs do not have adequate resources to handle the volume of these complex and time-consuming cases, and placement of contested family law cases on a strictly pro bono basis is not a viable model due to the emotionally charged and time-consuming nature of these cases. The Judicare Pilot Project is leveraging the resources of both legal services providers and the private bar, as well as engaging local bar associations, pro bono committees and family courts to work together to help fill the gap of unrepresented low-income clients.

As evidenced in this report, the Judicare Family Law Pilot Program has proven successful in providing family law litigants legal representation in complex, difficult cases in a cost-efficient, timely manner. The Project maximizes limited resources and leverages pro bono services to improve outcomes in contested family law matters. Other demonstrated benefits include a lessening of the burden that self-represented litigants impose on Maryland's courts, and an improvement of the administration of justice. Without the continuation of this successful program, Maryland's families engaged in contested family law matters would have no other viable resource.

I. Introduction

In response to the critical need to assure the administration of justice for low-income litigants so that they have appropriate representation in divorce, custody, visitation and other contested family law matters, the Maryland Legal Services Corporation (MLSC) in partnership with the Administrative Office of the Courts (AOC) revived the “Judicare” program in 2008, which was successful in Maryland in the 1970s and 1980s.

Access to lawyers for contested family law cases is critical for litigants to achieve just outcomes and equally important for the judicial system and society as a whole. Reports by the Maryland State Bar Association (MSBA)¹ and the Maryland Judiciary² document the plight of self-represented family litigants, unmet legal needs of low-income persons in the state and the past success of efforts by lawyers paid reduced fees to serve low-income persons who otherwise would be unrepresented.

This report is intended as a supplement to the recent AOC evaluation of the Judicare Family Law Pilot Project³ conducted from January 2008 through June 2009 and provide additional results from the continuation of the project in FY 2010. Whereas the AOC evaluation focuses on the experiences of the clients, attorneys, judges and administrators with the Judicare services, this supplement reviews studies that examine the value of representation by counsel in family law matters and presents case services data, including types of services, hours and cost-benefits. The report demonstrates the need for Judicare and illustrates the accomplishments of the recent Judicare Project, why Judicare works and the importance of continuing the Judicare model for providing representation in contested family law matters.

II. The Need for Judicare

A. Maryland State Bar Association 2007 Report and Recommendations for Judicare

In 2007 Professor Michael Millemann produced a report and recommendations for the MSBA on the “Potential Use of Private Lawyers Paid Reduced Fees to Represent Low-Income Persons in Civil Cases.”⁴ He documented the history in Maryland of Judicare, which he defined as

“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.’ 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.”

¹ Final Report and Recommendations on the Potential Use of Private Lawyers, Michael Millemann, University of Maryland School of Law for Maryland State Bar Association Section Council on Delivery of Legal Services and the Administrative Office of the Courts, May 2007

² Clearing a Path to Justice: A Report of the Maryland Judiciary Work Group on Self-Representation in the Maryland Courts, Maryland Judiciary, August 2007.

³ Evaluation of the Judicare Family Law Pilot Program, Administrative Office of the Courts, November 2010 (draft)

⁴ *Supra*, note 1.

Millemann noted that “during the past decade AOC and MLSC have taken important steps to increase the legal services that are available to indigent litigants in family cases.” These services include the Courts’ Self-Help Centers and the Reduced-Fee Contested Child Custody Project, which began in 1999 and is now part of the Judicare Family Law Project. Because of limitations of these programs, there are many people who cannot obtain the legal help they need to protect important interests in contested family cases. He stated that:

“Domestic cases ... 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.”

B. University of Baltimore School of Law 2003 Evaluation of Reduced-Fee Contested Custody Project

An earlier evaluation⁵ by the University of Baltimore School of Law of the MLSC’s private attorney reduced-fee contested child custody project (which is now part of the Judicare Project) and AOC’s legal services staff attorney contested custody project provided support of the importance of counsel in family law cases. The report noted that the custody project’s original intent was to offer litigation services to clients faced with a high conflict custody case and lacking the resources to hire an attorney. It also noted that private attorneys who agreed to represent eligible clients for a reduced-fee up to a cap were obligated to complete the case regardless of the number of hours involved.

The model contested child custody project was initiated by MLSC in three counties in late 1999 to increase legal assistance in the most critical under-served legal need of low-income Marylanders. Through input from a public hearing and other meetings with stakeholders, 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 programs. The University of Baltimore’s evaluation of the first three years of the model program showed that an average of 67% of reduced fee cases were closed following litigation and that the average cost per case was \$1,046. The report noted that direct effects of obtaining custody of a child or maintaining custodial arrangements resulted in

“stabilizing custody arrangements for children, thereby enabling family constellations either to remain intact or to place children in circumstances that would promote their best interests. Overall, the benefits of the project as they relate to stabilizing the custody arrangements for children may alone justify its continuance.”

Comments from those surveyed regarding the project’s benefits to litigants focus on the fact that, without the project, these individuals are not adequately prepared to engage in custody litigation and they may risk losing a child. The report noted that 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. For example, one judge said that in a contested custody matter, litigants usually do not know what information is most helpful to the court. An attorney can focus and distill the information and help the clients to obtain important and appropriate information for the court.

⁵ Model Child Custody Representation Project: Evaluation Report, Prepared by: Gloria Danziger, Center for Families, Children and the Courts, University of Baltimore School of Law, September 2003.

The reduced-fee model, and by extension Judicare, leverages attorney resources. One Master commented:

“not only does the modest funding substantially increase the pool of available attorneys for contested custody matters, but it has increased the pool of attorneys for pro bono matters not involving custody, insofar as many of the attorneys ... have agreed to do at least one additional pro bono matter as well.”

C. Other Research on Results of Attorney Representation and Self-Representation

Available studies consistently show that representation is an important variable affecting the claimant’s chances for success in litigated cases for eviction, custody and debt collection cases.⁶ Reaching a fair result is also best insured when both parties have representation. This is particularly true in custody cases, as demonstrated in a study⁷ that found that parents represented by counsel were more likely to request joint legal custody. Another study⁸ showed that parents were more likely to elect some form of shared decision making when both parties were represented. Recently, a Maryland study⁹ reported favorable outcomes for joint custody when both parties are represented and a higher prevalence for sole custody when only one party is represented.

Current data from the Maryland courts concerning self-represented litigants showed that both parties were pro se in 41% of the cases, and one party was pro se in 75% of the cases.¹⁰ Also, family law cases represent 48% of the current civil caseload in Maryland.¹¹

In a paper on the adversarial system in family law,¹² Assistant Dean Jane Murphy of the University of Baltimore School of Law notes that the way families resolve disputes has dramatically changed over the last decade and often compulsory mediation over child custody issues can pose a risk for outcomes when the parties enter agreements without adequate information and advice of lawyers. She states:

“The problem of lack of access to legal information is not limited to mediation, but pervades the family justice system. Judges, advocates, and scholars agree that the primary reason the traditional family justice system is dysfunctional is that the assumption upon which the system was built—a client and lawyer on each side—is no longer true. The most critical reform, therefore, necessary to fully realize the benefits of the adversary system in cases involving children is access to legal information, advice, and in some cases, full representation.”

⁶ Lawyering, Nonlawyer and Pro Se Representation and Trial and Hearing Outcomes, by Rebecca L.Sandefur, Stanford University, Sandefur-SSRN-id913426[1].pdf, June 30, 2006.

⁷ Dividing the Child: Social and Legal Dilemmas of Custody, by Eleanor E. Maccoby and Robert H. Mnookin, Harvard University Press, 1992.

⁸ Plans, Protections, and Professional Intervention: Innovations in Divorce Custody Reform and the Role of Legal Professionals, by Jane Ellis, 24 U. Mich. J.L. Reform 65, 114, 132, 2008.

⁹ Families in Transition: A Follow-up Study Exploring Family Law Issues in Maryland, The Women’s Law Center of Maryland, December 2006.

¹⁰ Administrative Office of the Courts, Department of Family Administration, January, 18, 2011.

¹¹ Administrative Office of the Courts, Court Research and Development, March 16, 2011.

¹² Revitalizing the Adversary System in Family Law, Jane C. Murphy, 78 U. CIN. L. REV. 891, 2010.

D. Evaluation of the Judicare Family Law Pilot Project from 2008 – 2009

The Judicare Evaluation Report by AOC¹³ focuses on the experiences of the clients, attorneys, judges and administrators with the Judicare services. It reports that 76% of clients were satisfied with the program and indicated that the attorney’s office was conveniently located. A substantial majority of survey respondents (78%) also indicated that it did not take a long time to get an appointment with their attorneys. The program works well as currently designed, with clients expressing appreciation for having been listened to and having someone advocate on their behalf. The study also noted that having an attorney “appears to have increased the comfort level of Judicare clients with regard to the court system and legal proceedings.”

Over 96% of participating attorneys indicated that they were happy with their overall experience and participation with the Judicare program, would participate again and recommend the Judicare program to a colleague. The attorneys reported both “personal and professional gain from the Judicare program.” The motivation to accept Judicare cases included helping others and giving back to the community; professional development (i.e., strengthening family law skills and reimbursement from Judicare provided necessary financial support); and support of access to justice. Notably, attorneys reported an average of 12 years of experience, supporting the project’s intention to provide clients with skilled attorneys. Attorneys confirmed the complicated, time-consuming nature of the cases, often with difficult clients.

Of the judges and masters surveyed, 73% indicated that having attorney representation had a favorable impact on outcomes, confirming findings of earlier studies cited in this report.

The AOC evaluation, although working from a small sample, concludes that “there are... clear indications that the Judicare Family Law Pilot Program has been successful in terms of perception of positive outcomes and satisfaction among clients, participating attorneys, and grantee administrators.”

III. Accomplishments of the Judicare Project – 2008 to 2010

A. Judicare Project Description

The Judicare Family Law Project, funded by the Maryland Legal Services Corporation (MLSC) and the Administrative Office of the Courts (AOC), supported eight organizations to engage private attorneys to provide reduced-fee legal services to low-income clients throughout the state. The project expands upon and combines the earlier Reduced-Fee Contested Custody Project (RFCC), which began in FY2000 to provide legal representation to low-income persons in complex contested custody matters, and the Judicare Family Law Pilot Project, from FY 2008 to present, which pays members of the private bar to represent income-eligible clients at a reduced rate, up to an established cap in contested custody as well as other contested family law matters.¹⁴

The project encourages family courts, local bar associations, pro bono committees, and legal services providers to work together to help fill the gap of unrepresented low-income clients. Judicare attorneys, who are required to be experienced in family law, are guaranteed compensation, support of litigation expenses, and mentoring support if needed. The program also

¹³ Supra, note 3

¹⁴ The current Judicare Project requires a minimum of 40% contested custody cases and the rest any contested family law matter.

leverages considerable attorney pro bono hours, with five out of six programs pairing a pro bono case along with the Judicare referral at the time of placement. Funding for the Judicare Family Law Project provides \$80/hour up to \$1,600/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. Project administration includes screening clients for eligibility, recruiting private attorneys, collecting data on the disposition of the case and managing payments to the attorneys. MLSC also provides a supplemental fund for additional compensation to attorneys once they reach the 20 hour cap and provide five hours of pro bono service. Once the case reaches 25 hours, the attorney is eligible for an additional 10 hours of compensation beyond 25 hours (for a total of \$2,400).

B. Judicare Project Case Services

Notable case activity from January 2008 through June 2010¹⁵ includes cases referred, ongoing and closed; unduplicated attorneys; attorney hours reported; average costs per closed case; percentage of cases handled by litigation; and outcomes/benefits, such as assisting clients gain or maintain custody, visitation, child support and divorce and receive advice and counseling.

Over the past three years, 2,046 cases were referred to private attorneys for contested family matters. Most data are collected on closed cases; however, to ascertain a complete picture of the amount of services provided during a reporting period it is necessary to take ongoing cases into account (i.e. cases that were opened prior to the reporting period and remain open during the current reporting period). In FY 2010, case services were provided for a total of 902 referred and ongoing cases. Closed cases have steadily increased, as have attorneys accepting cases and total hours spent on cases.¹⁶

Judicare Case Activity	FY2010	FY2009	FY2008	TOTAL
Cases Referred	670	838	538	2,046
Cases Ongoing	232	305	158	NA
Cases Closed	641	456	365	1462
Unduplicated Attorneys Accepting Cases	347	393	277	NA
Attorney Hours Reported	11,192	7,250	5,679	24,121

¹⁵ Status Report Judicare Family Law Project: FY 2010 (July 1, 2009 – June 30, 2010), Maryland Legal Services Corporation, January 2011. There are similar reports from FY 2009 and FY 2008.

¹⁶ The 20% decrease in referred cases in FY 2010 was due to a commensurate decrease in funding due to fully combining the Judicare and Reduced-Fee Custody projects with 24% less total funding than the prior year.

The average cost per closed case is \$1,186,¹⁷ and includes base and supplemental payments to attorneys, well below the initial cap of \$1,600.

By design, Judicare cases are mostly resolved by litigation rather than by brief advice, information or referral. This level of representation makes up only a small percentage of services provided in the general legal services delivery system. In FY 10, 79% of Judicare cases were litigated by reduced-fee attorneys. By comparison, only 8% of family law cases handled by staffed legal services programs are closed after litigation.

One of the most significant reasons for re-establishing a Judicare program in Maryland is the recognition that Maryland’s legal services providers simply do not have adequate resources to handle the volume of these complex and time-consuming cases. According to the Judicare Evaluation Report by AOC,¹⁸ 30% of clients fell into the LSC-MLSC “gap,” i.e., eligible under the MLSC guidelines but would not have been able to receive services from the Legal Aid Bureau under the LSC financial guidelines. Sixty-three percent of respondents would have been eligible under both MLSC and LSC guidelines for representation for their family law matter. Further, it was noted that the Legal Aid Bureau was a referral source to Judicare.

Judicare Cost-per-Case & Service Level	FY2010	FY2009	FY2008	3-YEAR AVERAGE
Av. cost per closed case (including Supplemental Funds and administrative costs)	\$1,023	\$1,527	\$1,007	\$1,186
% Cases handled by litigation	79%	76%	63%	73%

Outcomes of representation often benefit other family members. Over the first three years of the Judicare Project, 3,784 persons were directly affected by the outcomes; for example, 2,316 benefited from obtaining or maintaining custody of children, 304 from obtaining or preserving visitation and 468 for obtaining a divorce or annulment.

Judicare Outcomes	FY2010	FY2009	FY2008	TOTAL
Persons Directly Benefiting	1,685	1,251	848	3,784

In addition to the efficacy and cost efficiency of the Judicare Project shown by the case services activity, there is anecdotal evidence of the value of the services to clients and dedication of Judicare attorneys from MLSC grantees through client stories. For example,

A Baltimore City mother, who had left the home because of domestic violence, sought assistance with her divorce case. She had already filed for divorce without an attorney, by

¹⁷ This figure is derived from the amount paid to attorneys for closed and ongoing cases over the three years, including supplemental payments for cases exceeding 25 hours plus administrative costs, divided by the total number of closed cases.

¹⁸ Supra, note 3

getting advice from a free courthouse advice clinic. But, she had filed in the wrong jurisdiction, and also found the rules and procedures for requesting alimony were too complex for her to handle on her own. The case also became emotionally difficult for the client because she had to face a man who had abused her in the past. Her Judicare attorney helped her stay strong throughout, and ultimately a judgment for alimony was entered in favor of the client.

A Montgomery County man with four children sought assistance with divorce and custody. He was employed as a teacher making \$2,500 per month. His wife left the home and sought divorce, custody, support, and the marital home. After 104 hours of protracted litigation, with the help of his Judicare attorney, the parties reached a voluntary separation agreement regarding custody and divorce. Like many Judicare attorneys handling these complex and emotionally charged cases, this attorney worked far beyond the maximum reimbursable hours to assure justice for the client.

Another grantee would like to be able to place more Judicare case “because there continues to be a tremendous need.” She continues:

“Our limitation is the availability of attorneys who are willing to take the cases. We have a committed pool of attorneys who are willing to handle cases at the Judicare rate. Unfortunately, the cadre is relatively small. Currently, many have more than one Judicare client. Family law cases are often challenging and time consuming. Due to the financial and emotional issues faced by many Judicare clients, the substantive and client management issues can be particularly difficult. We continue to do outreach to identify new attorneys in order to place more cases but the pool is finite.”

C. Leveraging Pro Bono

Another result of the Judicare Project is the increase in pro bono activity due to the requirement by five of six of the pro bono programs that administer Judicare for an attorney to take at least one pro bono case for every reduced-fee Judicare case placed. Extrapolating from reported data, over 1,600 pro bono cases were able to be referred as a result of the Judicare Project over the period.

Also, the Judicare Project requires five pro bono hours before qualifying for supplemental payments for cases that exceed 20 hours. Since the inception of the Judicare Project in 2008, attorneys have provided 4,125 pro bono hours in these difficult, time-consuming cases, translating into a donation of close to \$1 million of attorney time based on fair market value.¹⁹

IV. Conclusions

The results of the research described in this report as well as the AOC Judicare evaluation and MLSC Judicare data clearly demonstrate the success of the Judicare model for providing representation in complex, difficult cases in a cost-efficient, timely manner for low-income litigants that otherwise would be unrepresented in court.

Since the inception of the Judicare Pilot Project, over 2,000 litigants who would have otherwise been unrepresented received expert legal representation by private attorneys

¹⁹ The AOC Evaluation Report noted that the average fee charged by Judicare attorneys in non-Judicare cases is \$220. Judicare grantees reported 5,355 hours over the 20-hour cap of which 1,230 hours were paid through the Supplemental Judicare Fund, resulting in 4,125 pro bono hours.

compensated at significantly reduced fees through the Judicare Project, and approximately 3,800 individuals benefitted from these services. The project has leveraged more than 4,100 hours of free service or approximately one million dollars of free legal services to low-income Marylanders. Furthermore, the Project is leveraging the resources of both legal services providers and the private bar, as well as engaging local bar associations, pro bono committees and family courts to work together to help fill the gap of unrepresented low-income clients.

Other Project benefits include a lessening of the burden that self-represented litigants impose on Maryland's courts and an improvement of the administration of justice. Without the continuation of this successful program, Maryland's families engaged in contested family law matters would have no other viable resource.