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DIVERSIFYING THE DELIVERY OF LEGAL SERVICES TO THE POOR BY ADDING A REDUCED FEE PRIVATE ATTORNEY COMPONENT TO THE PREDOMINANTLY STAFF MODEL, INCLUDING THROUGH A JUDICARE PROGRAM

MICHAEL A. MILLEMANN*

I. INTRODUCTION

In this article, I argue that policy-makers who design and fund civil legal services programs that represent the poor should diversify the predominantly “staff” models, through which full-time poverty lawyers provide the legal services, by adding reduced fee, private lawyer components—including a Judicare component—to their delivery systems.¹ I use the delivery system, experiences, and unmet legal needs in Maryland as the context for making this argument.

In Part II, I provide an overview of the Maryland civil legal services delivery system.² In Part III, I examine the unmet legal needs of the poor in Maryland.³ In Part IV, I describe and evaluate Maryland’s experiences with reduced fee indigent legal services projects and a Judicare program, and consider the arguments for and

*Jacob A. France Professor of Public Interest Law, University of Maryland. In writing this article, I relied heavily on a report I prepared for the Maryland State Bar Association in 2007, through its Section on the Delivery of Legal Services. See MICHAEL A. MILLEMANN, 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 (2007) [hereinafter 2007 MILLEMANN REPORT]. I deeply appreciate the strong support I received on that project from Tracy Brown, the Chair of the Section, and the other members of that Section; the Maryland Administrative Office of The Courts, through Frank Broccolina, State Court Administrator, and Pamela C. Ortiz, Executive Director of Family Administration; the Maryland Legal Services Corporation, through Susan M. Erlichman, Executive Director, and Harriet Robinson, Deputy Director; and many other people in Maryland’s legal services community. I also deeply appreciate the excellent work of my research assistants, Benjamin Hu, Michael Gerton, and Bryan Saxton.

1. “Judicare” is an abbreviation 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.” Larry R. Spain, *The Opportunities and Challenges of Providing Equal Access to Justice in Rural Communities*, 28 WM. MITCHELL L. REV. 367, 377–78 (2001). It is a model that has been successful in Maryland, see *infra* Part IV, and it is a major model for providing legal services to the poor in many nations throughout the world. See *infra* Part V.

2. See *infra* Part II.

3. See *infra* Part III.

against using private attorneys, on a reduced fee basis, to represent the poor.⁴ In Part V, I conclude that increasing the use of private attorneys, who are paid reduced fees, to represent the poor in Maryland is an essential step in providing them with effective access to justice.⁵

II. OVERVIEW OF MARYLAND'S CIVIL LEGAL SERVICES DELIVERY SYSTEM FOR THE POOR

Maryland has a unique civil legal services delivery system for the poor.⁶ “What sets Maryland apart . . . dramatically from other states is the configuration of its service providers,”⁷ which include “one very large program funded by the national Legal Services Corporation and by the Maryland Legal Services Corporation,”⁸ and over thirty smaller, specialized service providers.⁹

Through these many programs, the substantial majority of legal services are provided by “staff attorneys:” full-time, specialized lawyers who are paid annual salaries by the program that employs them.

The large, statewide provider the Legal Aid Bureau, Inc. is the oldest legal services program in Maryland and the “centerpiece of the legal services delivery system in the state.”¹⁰ This “staff” program has many legal service strengths, including: (1) “approximately [eighty] staff attorneys in thirteen offices statewide”¹¹ specializing in “housing, public benefits, consumer, employment and family law;”¹² (2) “the potential to focus substantial resources on major legal problems that affect the low income community;”¹³ and (3) the

4. *See infra* Part IV.

5. *See infra* Part V.

6. In FY 2006, total funding for civil legal services was roughly \$45.7 million (from all funding sources). Approximately \$15.7 million of this was for legal services mandated by federal or state law. HARRIET ROBINSON, MARYLAND LEGAL SERVICES CORPORATION, LS FUNDING ABA CHART FY 07 (2007).

7. JOHN A. TULL & ASSOCS., REPORT ON THE EVALUATION OF THE LEGAL SERVICES DELIVERY SYSTEM IN MARYLAND 2 (June 2000).

8. *Id.*

9. *Id.*

10. STANDING COMMITTEE OF THE COURT OF APPEALS ON PRO BONO LEGAL SERVICE, STATE ACTION PLAN AND REPORT 9 (2006) [hereinafter 2006 STANDING PRO BONO COMMITTEE REPORT].

11. *Id.*

12. *Id.*

13. TULL & ASSOCS., *supra* note 7, at 3.

“capacity to develop and implement statewide strategies to respond to a variety of legal issues.”¹⁴

Three other statewide entities either provide services directly or support legal service providers: the Maryland Volunteer Lawyers Service, Inc. (MVLS),¹⁵ the Pro Bono Resource Center of Maryland, Inc.,¹⁶ and the Maryland Administrative Office of the Courts (AOC).¹⁷

Among the other thirty or so smaller legal services providers are “stand-alone organizations that target very specific populations, or legal problems . . . [as well as] part[s] of larger organizations, which focus on specific populations or legal problems, and serve as the legal service provider for persons served by those organizations.”¹⁸ This multi-organizational model of legal services

14. *Id.*

15. See Maryland Volunteer Lawyers Service, History, http://www.mvlslaw.org/index.php/about_folder/history/ (stating that MVLS, founded in 1981, is Maryland’s “largest provider of pro bono civil legal assistance, having helped more than 40,000 low-income individuals” since its creation) (last visited Mar. 23, 2009). Together, MVLS and local pro bono providers recruit and place cases with volunteer lawyers across the state. 2006 STANDING PRO BONO COMMITTEE REPORT, *supra* note 10, at 9–10.

16. See Pro Bono Resource Center of Maryland, About PBRC, <http://www.probonomd.org/how.html> (last visited Mar. 23, 2009) (“PBRC is the statewide clearinghouse and coordinator of pro bono legal services [PBRC] promote[s] 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. As a separate non-profit organization which supports the Maryland State Bar Association, the Center 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 in the way of free or discounted training (including MICPEL courses), and pro bono court reporting services.”).

17. In the author’s opinion, the Maryland AOC, through the leadership of Chief Judge Robert M. Bell and State Court Administrator Frank Broccolina, is nationally distinctive in its support for civil legal services, including its support for creative new initiatives. See 2007 MILLEMANN REPORT, *supra* note *, at 22 (“AOC funds an array of family law-related legal services . . . [including] the self-help centers in each of Maryland’s [twenty-four] 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.”).

18. TULL & ASSOCS., *supra* note 7, at 2. In FY 2006, these smaller legal service providers included: Allegany Law Foundation; Alternative Directions, Inc.; Asian Pacific American Legal Resource Center; Associated Catholic Charities of Baltimore; Catholic Community Services; Community Law Center, Inc.; Community Legal Services of Prince Georges County; Domestic Violence Center of Howard County; Harford County Bar Foundation, Inc.; Health Education Resource Organization (HERO); Heartly House, Inc.; Homeless Persons Representation Project; House of Ruth; Maryland Civil Liberties Union Foundation; Maryland Coalition for Inclusive Education; Maryland Crime Victims Resource Center, Inc.; Maryland Disability Law Center; Maryland Public Interest Law Project; Maryland Volunteer Lawyers Service; Mid-Shore Council on Family Violence, Inc.; Montgomery County Bar Foundation; Pro Bono Resource Center of Maryland; Public Justice Center, Inc.; St. Ambrose Housing Aid Center, Inc.; Sexual Assault Legal Institute;

has strengths as well, including: (1) the specialization and sub-specialization of services; (2) outreach to inaccessible client groups; (3) freedom from restrictions on legal work that come with funding from the national Legal Services Corporation;¹⁹ and (4) the capacity to conduct creative delivery experiments.

There also are legal information and advice centers in each of Maryland's twenty-four circuit courthouses that provide limited assistance to otherwise pro se litigants in family matters.²⁰ The Circuit Court Family Division and Family Law Administrators and Support Services Coordinators largely administer these centers.²¹ Through the centers, lawyers and paralegals provide legal information, assistance in filling out and filing simplified pleading forms, limited legal advice (in many, but not all of the centers), and referrals for legal and other services.²²

This is one part of Maryland's delivery system in which private lawyers, who are paid reduced fees, play a successful and significant role in providing legal services to the poor.²³ The centers provide services through: (1) contractual lawyers;²⁴ (2) contracts with legal services organizations, which either subcontract with private lawyers²⁵ or use a staff model that is supported—at times—by volunteer lawyers who deliver services;²⁶ (3) court-hired lawyers and paralegals;²⁷ and (4) volunteer lawyers.²⁸

Southern Maryland Center for Family Advocacy; Whitman-Walker Clinic Legal Services Program; and YWCA of Annapolis and Anne Arundel County. MARYLAND LEGAL SERVICES CORPORATION, INTEREST ON LAWYER TRUST ACCOUNTS, ANNUAL REPORT 9–13 (2006), available at <http://www.mlsc.org/2006AnnualReport.pdf> [hereinafter FY 2006 MARYLAND LEGAL SERVICES CORPORATION ANNUAL REPORT].

19. See generally David Luban, *Taking Out the Adversary: The Assault on Progressive Public-Interest Lawyers*, 91 CAL. L. REV. 209 (2003) (discussing the class-action, lobbying, administrative advocacy, and other restrictions on the representation of LSC-funded lawyers).

20. See Maryland Department of Family Administration, Family Support Service Coordinators, Family Division Administrators, and Permanency Planning Liaisons, <http://www.courts.state.md.us/family/coordinators.html> (last visited Mar. 23, 2009).

21. *Id.*

22. *Id.*

23. *Id.*

24. 2007 MILLEMANN REPORT, *supra* note *, at 52–53 (stating that twelve jurisdictions use the primary model, and emphasizing that “[A]lthough the vast majority of contractual attorneys are in private practice, in two jurisdictions, there are reduced fee contracts with Legal Aid Bureau lawyers”).

25. *Id.* at 53 (four jurisdictions).

26. *Id.* (three jurisdictions, in two of which the Legal Aid Bureau is the provider).

27. *Id.* (four jurisdictions).

28. *Id.* (two jurisdictions); Prince Georges County is counted twice since it uses both the #2 and #3 models. JOHN M. GREACEN, REPORT ON THE PROGRAMS TO ASSIST SELF REPRESENTED LITIGANTS OF THE STATE OF MARYLAND: FINAL REPORT 26 (2004).

Statewide hotlines—including a Family Law Hotline that the Women’s Law Center (WLC) and the Legal Aid Bureau, Inc. (LAB) jointly operate, a Legal Forms Helpline managed and operated by the WLC, and a landlord-tenant hotline run by Baltimore Neighborhoods, Inc.—provide legal assistance to low-income citizens in Maryland. Online services, such as those offered by The Peoples Law Library, expand legal assistance to the poor. The State’s two law schools have well-developed clinical law and public interest programs as well.²⁹

III. UNMET LEGAL NEEDS

A. Generally

Despite this impressive array of legal services programs, considerable unmet legal needs still exist in Maryland. The last quantitative study of the legal needs of low-income people performed in 1987 showed that four out of five poor people could not obtain the legal help they needed.³⁰ Since 1987, there have been substantial improvements in the delivery system.³¹ Although it is impossible to quantify the need for legal services, the majority of low-income residents in Maryland currently lack the access to legal assistance needed to resolve civil issues.³²

I begin my analysis by identifying the number of poor people eligible for free legal aid in Maryland (the denominator in the unmet legal need equation), and then consider studies that show the limited

29. 2007 MILLEMANN REPORT, *supra* note *, at 1; *see also* The Women’s Law Center Home Page, <http://www.wlcmd.org> (last visited Feb. 16, 2009); Baltimore Neighborhoods, Inc. Home Page, <http://www.bni-maryland.org> (last visited Feb. 16, 2009); Maryland’s Peoples Law Library Home Page, <http://www.peoples-law.org> (last visited Feb. 16, 2009); University of Maryland School of Law—Clinical Law Program, <http://www.law.umaryland.edu/programs/clinic/index.html> (last visited Feb. 16, 2009); University of Baltimore School of Law—Clinical Law Program, <http://law.ubalt.edu/template.cfm?page=372> (last visited Feb. 16, 2009).

30. ADVISORY COUNCIL OF THE MD. LEGAL SERVS. CORP., ACTION PLAN FOR LEGAL SERVICES TO MARYLAND’S POOR vi (1988) [hereinafter 1988 LEGAL SERVICES ACTION PLAN].

31. 2007 MILLEMANN REPORT, *supra* note *, at 22. For example, there are now legal information and advice centers in Maryland’s twenty-four circuit courthouses, *see supra* text accompanying notes 20–28; there are statewide hotlines through which lawyers provide advice and limited representation to callers, *see supra* text accompanying note 29; and there is also a Contested Custody Representation Project through which lawyers provide representation to litigants in contested custody proceedings. *See infra* text accompanying note 57.

32. *See infra* Part III (discussing legal needs studies).

number of poor people who are able to obtain the civil legal services that they need (the numerator).

Two major sets of client financial eligibility guidelines determine the number of poor people eligible for free legal services in Maryland. The Maryland Legal Services Corporation (MLSC) bases its guidelines on fifty percent of Maryland median income.³³ Under MLSC, about one million Marylanders are eligible for free legal aid in civil cases.³⁴ Under the national Legal Services Corporation guidelines, about five hundred thousand people in Maryland meet the financial eligibility guidelines.³⁵ The Legal Aid Bureau, Inc. (LAB) follows the Legal Services Corporation (LSC) guidelines for a majority of its clients.³⁶

The substantial difference in the numbers of people who are eligible for free legal services under the two sets of indigence standards is critically important in thinking about and developing Maryland's legal services delivery system. At the threshold, policy-makers must decide how best to provide legal assistance to the approximately five hundred thousand poor people, roughly half of Maryland's poor, who are not eligible for LAB legal services.³⁷ It is clear that this population, as well as the poorest of the poor, cannot obtain the legal help they need. Inevitably, this compels one to ask whether private lawyers can be engaged in providing some of the required services to this population.

Studies of Maryland's legal needs estimate that low and moderate-income households in Maryland experience one³⁸ to three³⁹

33. 1988 LEGAL SERVICES ACTION PLAN, *supra* note 30, at 8.

34. 2006 STANDING PRO BONO COMMITTEE REPORT, *supra* note 10, at 5. The Maryland Judicial Commission on Pro Bono has said that in 1999, one million Maryland residents qualified for free legal services under the MLSC standards. THE MARYLAND JUDICIAL COMMISSION ON PRO BONO: REPORT AND RECOMMENDATIONS 2 (2000) [hereinafter 2000 JUDICIAL PRO BONO COMMISSION REPORT]. 1988 LEGAL SERVICES ACTION PLAN, *supra* note 30, at 8.

35. 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 below the poverty threshold." 2006 STANDING PRO BONO COMMITTEE REPORT, *supra* note 10, at 4.

36. *See generally* 2006 STANDING PRO BONO COMMITTEE REPORT, *supra* note 10.

37. Figure derived from 1 million Maryland residents meeting the MLSC standards for free legal services, minus the half a million Maryland residents who qualify under the LAB/LSC guidelines. *Id.* at 4–5.

38. THE MARYLAND MODERATE INCOME ACCESS TO JUSTICE ADVISORY TASKFORCE, PRELIMINARY REPORT AND PRELIMINARY RECOMMENDATIONS OF THE UNMET LEGAL NEEDS OF MODERATE INCOME PERSONS IN MARYLAND 5, 8 (1996) [hereinafter 1996 MODERATE INCOME TASK FORCE REPORT] (defining "moderate income" to be \$15,000–\$45,000). In 1996, a family of four with an annual income of \$26,859 was financially eligible for legal services under the MLSC guidelines. Maryland Legal Services Corporation, Client Income Eligibility

legal problems a year. Annually, the MLSC grantees in Maryland, including the LAB, combine to provide some form of legal assistance to approximately 105,000 people a year.⁴⁰ 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.⁴¹

Over the last twenty years, a number of Maryland legal needs assessments independently concluded that low-income people experience great difficulty obtaining legal representation for family, housing, consumer (including bankruptcy), employment, and entitlements problems, among others.⁴²

B. The Special Need for Additional Representation in Family Cases

During the past decade, the AOC and the MLSC have taken important steps to increase the legal services available to indigent litigants in family cases. The AOC funds and supports self-help centers in every jurisdiction in Maryland.⁴³ These centers provide primarily pre-filing assistance to pro se litigants.⁴⁴ Other programs provide post-filing representation to litigants in both contested and uncontested civil cases, such as the Contested Custody Representation Project (CCRP).⁴⁵

However, the programs providing legal services in family cases operate with substantial limitations. The self-help centers provide very

Guidelines, July 1, 1995–June 30, 1996. Thus, there were many MLSC-eligible people within the scope of the 1996 MODERATE INCOME TASK FORCE REPORT study.

39. 1988 LEGAL SERVICES ACTION PLAN, *supra* note 30, at 11.

40. See FY 2006 MARYLAND LEGAL SERVICES CORPORATION ANNUAL REPORT, *supra* note 18, at 4 (finding that MLSC grantees closed 104,329 cases in FY 2006).

41. 2000 JUDICIAL PRO BONO COMMISSION REPORT, *supra* note 34, at 3.

42. 2007 MILLEMAN REPORT, *supra* note *, at 25–30 (summarizing five Maryland legal needs studies and assessment during the past twenty years).

43. See Administrative Office of the Courts (AOC), <http://www.courts.state.md.us/aoc/> (last visited Mar. 23, 2009).

44. *Id.*

45. The self-help centers and Contested Custody Representation Project are described *infra* Part IV.

limited services. Limited numbers of lawyers are available in volunteer programs to assist clients with contested and protracted cases. Further, all family law programs have “triage” criteria in addition to financial criteria that limit intake, often strictly, by the specialty⁴⁶ or the program’s priorities.⁴⁷

Therefore, many people cannot obtain the legal help needed to protect important interests in contested family cases. For example, FY 2006 AOC data indicated that in “the Circuit Court for Baltimore City, [eighty-five percent] of all cases involved at least one self-represented litigant at the time the Answer was filed.”⁴⁸ This figure averaged out to seventy percent of cases statewide.⁴⁹ At the other end of the process, when trials were held, both parties were represented in only twenty-seven percent of the cases, and one party only had counsel in an additional thirty-three percent of the cases.⁵⁰ Thus, both parties were pro se in forty percent of the cases, and one party was pro se in seventy-three percent of the cases.⁵¹

Family cases comprise forty-six percent of the total circuit court caseload in Maryland and sixty-five percent of the total civil caseload.⁵² As domestic family cases involve fundamental interests,⁵³ the prevalence of pro se litigants imposes substantial burdens on the courts and administration of justice.

By other measures, the need for additional representation in family cases is compelling as well. Indigent parties cannot obtain the necessary legal representation in a number of legal situations. These include first party custody cases involving disputes between parents or legal guardians about the custody of their children; third party custody cases, in which grandparents are asserting the right to custody of grandchildren who have been neglected or abused; and contested divorces involving spousal support or property issues.

Domestic cases such as these involve critically important interests and complex relationships. The law protects the right of natural parents to raise their own children. Cases in which

46. Some programs specialize in domestic violence.

47. Programs place priority on immediate issues such as threats to the physical safety of a spouse or child.

48. ADMIN. OFFICE OF THE COURTS, DEP’T OF FAMILY ADMIN., FY 2006 ANNUAL REPORT OF THE MARYLAND CIRCUIT COURT FAMILY DIVISIONS AND FAMILY SERVICES PROGRAMS 37 (2007).

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* at 18.

53. Domestic cases involve issues such as child custody and divorce.

grandparents, extended family members, or other persons seek custody of a non-biological child create emotionally difficult situations for everyone, especially if the third party seeks custody against the wishes of the child's parents. Other cases involve vital financial support issues; after separation, a court determination of spousal support or spousal property interests such as a pension may be a litigant's sole source of income.

Complexities in family cases may pose a threat to the success of pro se litigants. Many non represented litigants are ill-equipped to handle interstate and inter-jurisdictional issues under the Maryland Uniform Child Custody Jurisdiction Act.⁵⁴ Other obstacles include the distribution of pension plans, especially when opposing parties fail to disclose or only partially disclose those plans.

Some particularly vulnerable and incapable litigants face a disadvantage regardless of the issue presented. Mentally or emotionally handicapped litigants, youthful litigants, and illiterate litigants may be unable to understand the issues, procedure, consequences, or outcomes of a court proceeding. Although courts have power to appoint counsel for children in some divorce cases, such power is ineffectual in situations where indigent parties are unable to pay for counsel.⁵⁵ Children subject to adoption petitions may also need independent representation in some situations.

Finally, pro se litigants face a substantial disadvantage in court proceedings when the opposing party has obtained legal representation. Providing counsel to the pro se party may be the only way to make such proceedings fair.

54. There are other complexities in family cases that pro se litigants are ill-equipped to handle, for example, interstate and inter-jurisdictional issues under the Maryland Uniform Child Custody Jurisdiction Act. *See* MD. CODE ANN., FAM. LAW § 9.5-201 (West 2008).

55. In September, 2005, the Maryland Judicial Conference issued standards for court-appointed lawyers who represent children in custody cases. MD. JUDICIAL CONFERENCE COMM. ON FAMILY LAW, CUSTODY SUBCOMM., MARYLAND STANDARDS OF PRACTICE FOR COURT-APPOINTED LAWYERS REPRESENTING CHILDREN IN CUSTODY CASES (2005). 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). *Id.* at 7-8. 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.

IV. THE USE OF PRIVATE LAWYERS—WHO ARE PAID REDUCED FEES— TO PROVIDE SOME OF THE ADDITIONALLY NEEDED REPRESENTATION, INCLUDING THROUGH A JUDICARE MODEL

Building upon the background provided above, the predominantly staff model of indigent legal services should be diversified by involving private lawyers to aid in the delivery of legal services to the poor at a reduced fee funded by the state or another source. Utilization of a Judicare program in which indigent clients use a voucher or similar method to choose a private lawyer that they wish to represent them would accomplish such a goal.

Following the admonition of Justice Oliver Wendell Holmes, Jr., that “[t]he life of the law has not been logic: it has been experience,”⁵⁶ section A analyzes Maryland’s experiences with such programs. Section B then evaluates theoretical arguments regarding whether to incorporate diversification of the predominantly staff model of indigent legal services through incorporating private lawyers.

A. Maryland’s Experience with Reduced Fee Indigent Legal Services

As already stated above, in Maryland’s legal services delivery system for the poor, private lawyers play substantial roles in two separate projects: (1) the Contested Custody Representation Project (CCRP), and (2) legal information and advice centers in all of Maryland’s twenty-four jurisdictions.⁵⁷ Both programs provide competent and cost-effective legal services to indigent clients in family cases and significantly buttress the legal services provided by staff programs.

1. The Contested Custody Representation Project

The CCRP, which began as an experiment in 2000, is funded jointly by the AOC and MLSC. It has a reduced fee, private attorney component and a staff component operated by the LAB.⁵⁸ As the name of the project suggests, the staff and private attorneys represent

56. O.W. HOLMES, JR., *THE COMMON LAW* 1 (1881).

57. *See supra* Part(s) I, II.

58. GLORIA DANZIGER, CTR. FOR FAMILIES, CHILDREN AND THE COURTS, UNIV. OF BALT. SCH. OF LAW, *MODEL CONTESTED CHILD CUSTODY REPRESENTATION PROJECT EVALUATION REPORT 1* (2003). *See also* Maryland Legal Services Corporation, Special Projects, <http://www.mlsc.org/projects.htm> (last visited Mar. 23, 2009).

litigants in a limited number of domestic cases in which child custody is contested.⁵⁹

Not-for-profit organizations recruit and support the participating private attorneys. These organizations then assign appropriate cases to each attorney.⁶⁰

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, [as] 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.⁶¹

Today, regional and county-specific CCRP projects have been implemented throughout the state. Funding for the private attorney component authorizes a fee of up to one thousand dollars per case.⁶² However, a “waiver” process allows an additional five hundred dollars

59. DANZIGER, *supra* note 58, at 1. In addition to MLSC income eligibility requirements, 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.” *Id.* at 6. Staff have some discretion to accept other cases. 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, primarily 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.

60. Information provided to author during his study, from lawyers and administrators of the CCRP projects.

61. See *supra* 2007 MILLEMANN REPORT, note *, at 6.

62. *Id.* at 62.

in cases of exceptional circumstances when the attorney has already contributed pro bono hours of legal representation.⁶³

Paradoxically, FY 2006 data indicates that private attorneys provide a higher percentage of expensive litigation services at an average cost per case substantially less than charged by the staff component for more limited representation.⁶⁴

Specifically, the private attorney component provided the following composition of services: sixty percent for litigation, fifteen percent for brief advice, eleven percent for negotiation, five percent for counseling, and nine percent for other services.⁶⁵

The staff attorney component provided the following proportions of services: seventy-four percent for brief advice, nineteen percent for litigation, seven percent for other services, and one percent for counseling.⁶⁶ Staff components averaged \$2,104 per closed case, while the private attorney component maintained a low average of \$671 a case.⁶⁷ Based on a 2003 evaluation, clients reported high levels of satisfaction with both components of the project.⁶⁸

To determine whether to expand the use of private attorneys in representing the poor on a reduced fee basis, it is important to consider the likelihood of recruiting adequate numbers of qualified private lawyers to provide limited fee representation.⁶⁹ Past reports recommend increasing the per case cap for the CCRP to \$1.6 thousand, with a “waiver provision” authorizing an additional eight hundred dollars per case after the lawyer contributes five hours of pro bono representation.⁷⁰ It might be necessary to increase these amounts further to attract and retain qualified private lawyers. However, even if the rates are substantially increased, the costs of the private attorney component will likely favorably compare to per case costs provided by the staff component. As noted above, rates charged by the staff component totaled over three times the costs of the private attorney component in FY 2006.⁷¹

Successful recruitment of private attorneys depends on a number of factors: local judicial leadership, the availability of training

63. *Id.* at n.174.

64. *Id.* at 64 .

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.* at 60.

69. *Id.* at 66–67.

70. *Id.* at 16.

71. *Id.* at 64.

and mentors for less-experienced lawyers, personal relationships between the recruiters (judges, masters, and project staff) and the recruited attorneys, and the complexity and time demands of the types of cases the project staff seek to place.⁷²

2. *The Legal Information and Advice Centers*

Part II described the four models circuit courts use to provide legal information and limited legal advice to pro se parties seeking to file and litigate family cases. In a substantial majority of jurisdictions, private attorneys provide the bulk of these legal services by acting as contractors with the courts or subcontractors to not-for-profit programs that contract with the courts.⁷³ In offices within the courthouse on a rotating basis, the attorneys provide legal information, advice, assistance in filling out simplified pleading forms, and referrals to the pro se litigants. The circuit court's family division administrator (in the direct contractual model) or the not-for-profit program (in the subcontractual model) recruits and schedules the attorneys, provides the necessary administrative support, provides supplemental information and assistance to the litigants, and responds to the needs of the judges and masters in managing the otherwise pro se litigation.

Because these centers are locally administered, hourly rates for participating attorneys range from forty dollars an hour to one hundred dollars an hour.⁷⁴ There is a similar range, depending primarily on the numbers of pro se litigants, in the hours per week that the centers provide services, varying from three hours to forty hours a week.⁷⁵

In preparing my report and recommendations, I interviewed the administrators of the centers in each of the twenty-four jurisdictions; reviewed an evaluation of five of the centers; interviewed public and private participating attorneys; and interviewed AOC officials who fund and support the centers.⁷⁶ I emphasize that this body of information was relevant to both programs in which staff legal services programs provide the services and the more prevalent model in which private attorneys provide the services through contracts and subcontracts. In my view, both models were working well to provide the albeit limited services that many pro se parties need to initiate family litigation.

72. *Id.* at 66–67.

73. *Id.* at 52–54.

74. *Id.* at 55.

75. *Id.*

76. See generally 2007 MILLEMANN REPORT, *supra* note *.

B. Maryland's Experiences with Judicare

When, in the 1960s, advocates of federal funding for civil legal assistance in this country debated as to how the federally funded programs might be structured, some contended that a Judicare model⁷⁷ should be added to the now dominant staff model to create a "mixed" delivery system, enlisting both public and private attorneys in the representation of poor and moderate-income clients. Gary Bellow, one of the national legal services leaders at the time, was a proponent of this opinion. Professor Jeanne Charn recalls that in helping to create the federal

Office of Economic Opportunity's program of legal services for the poor in the early 1970s, [Bellow] 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.⁷⁸

According to Charn, Bellow "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."⁷⁹

One state, Maryland, substantially developed a mixed private/public lawyer model; however, the model limited representation to the state's poor population.⁸⁰ Although the intricacies of the administration of Maryland's Judicare Program are beyond the

77. See *supra* Part I.

78. 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).

79. *Id.*

80. Wisconsin is another state that developed a substantial Judicare program. "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 (OEO) Office of Legal Services, the forerunner of the Legal Services Corporation, funded the Wisconsin Judicare Program to serve [seventeen] rural counties in Wisconsin." Spain, *supra* note 1, at 377. The national Legal Services Corporation has funded smaller Judicare programs in some other states as well. See *infra* Part V.

scope of this article,⁸¹ the basic features and history of that program are important in evaluating whether some version of Judicare should be added to the indigent legal services delivery system today.

Between when the Maryland Judicare Program was created in 1971, and when the State began to limit the program in 1981, a mixed model delivery system existed in Maryland.⁸² By 1981, Judicare—with a budget of approximately \$2.5 million—and the Legal Aid Bureau—with a budget of approximately \$6.3 million—provided the vast majority of civil legal services to the poor.⁸³ In 1984, John Michener, the Director of the Maryland Legal Services Program (MLSP) from 1979 to 1990,⁸⁴ described this mixed model:

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.⁸⁵

An employee of the local department of social services conducted an intake interview only to determine the financial eligibility of the applicant for Judicare services.⁸⁶ If the employee found the applicant to be financially eligible, the intake interviewer provided a list of Judicare lawyers that the interviewer obtained from “the local Bar Association”⁸⁷ and a packet of forms that served as a voucher, authorizing the client to choose a lawyer from any member of the Maryland bar who would take Judicare cases.⁸⁸ The interviewer mailed the “control copy” of the form to the Director of the MLSP.⁸⁹

81. For a detailed account, see 2007 MILLEMAN REPORT, *supra* note *, at 38–42.

82. *Id.*

83. *Id.* at 47.

84. *Id.* at 38, n.78.

85. John Michener, *The Pro Bono Program in Maryland: The Prototype for Interlocking Pluralism*, 17 MD. B.J. 7 (1984).

86. 2007 MILLEMAN REPORT, *supra* note *, at 39.

87. MD. CODE REGS. 07.02.19.03 (1976).

88. MD. CODE REGS. 07.02.19.06 (1976).

89. 2007 MILLEMAN REPORT, *supra* note *, at 39.

In an “initial interview,” the Judicare attorney either provided the necessary service, such as advice or determined further services to be necessary.⁹⁰ If the attorney determined “that the client [was] in need of further legal services,” the attorney was required to “forward the contract to the Director.” The attorney was further authorized to “proceed with the case unless the Director notific[e]d him within [seven] working days of a disapproval.”⁹¹

The program covers an exceedingly broad range of legal problems. Judicare reimbursed lawyers for representing clients in virtually every type of civil legal problem a low-income person might have, including: “consumer/finance,” “contracts/warranties,” “education,” “employment,” “family,” “health,” “income maintenance,” “miscellaneous” (“torts, wills/estates, other”), and “appeals.”⁹²

The attorneys’ fees were established by an hourly rate of twenty-five dollars, up to a five hundred dollars “maximum fee,” which the regulations said could be “waived only upon showing good cause,”⁹³ and by a schedule of maximum fees for particular types of cases, for example, five hundred dollars for a contested divorce and custody case.⁹⁴ However, that case cap also could be waived for good reason. At the time, the State Bar Association used this fee schedule. Thus, the fee schedule maintained some basic equality between fees paid to Judicare attorneys and fees private lawyers customarily charged non-Judicare clients.⁹⁵ A lawyer could not earn more than five thousand dollars a year from Judicare fees.⁹⁶

When an attorney completed the legal services, the bill is submitted for review and approval to a local judge in many cases, to a lawyer appointed by the local bar association if the fee was five

90. MD. CODE REGS. 07.02.19.07(B)(1) (1976).

91. MD. CODE REGS. 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, app. 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”), app. 2.

92. MD. CODE REGS. 07.02.19.04(B) (1976).

93. MD. CODE REGS. 07.02.19.08(B) (1976). *See also* Michener, *supra* note 85, at 3.

94. MD. CODE REGS. 07.02.19.08 SCHEDULE A (1976).

95. Interview with John Michener, Director of the Maryland Legal Services Program from 1979–1990 (Jan. 26, 2007).

96. MD. CODE REGS. 07.02.19.08(C) (1976).

hundred dollars or less, or to the Director of the MLSP if the fee exceeded five hundred dollars.⁹⁷ The billing

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.”⁹⁸

After 1981, the Judicare Program was gradually dismantled for reasons other than the effectiveness of the program, and it finally ended in 1992.⁹⁹ Most importantly, Judicare funds were transferred to the Legal Aid Bureau to help it survive threatened and actual reductions in federal funding. Mr. Michener explains that

[d]uring 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.¹⁰⁰

There is little documentary evidence today regarding the quality of services Judicare-funded attorneys provided to the poor, and few formal quality control mechanisms were implemented during the life of the program. However, lawyers who participated in the program by and large commend it as fair and effective.¹⁰¹ The program’s structure effectively safeguarded against flagrant abuses in fee-submission and approval processes. The program protected against abuses by requiring attorneys to submit detailed information subject to

97. MD. CODE REGS. 07.02.19.08(B) (1976).

98. 2007 MILLEMANN REPORT, *supra* note *, at 41.

99. *Id.* at 45.

100. Interview with John Michener, *supra* note 95.

101. 2007 MILLEMANN REPORT, *supra* note *, at 47.

inspection either by a local judge, lawyer, or by a statewide bar committee that reviewed fee requests over five hundred dollars.¹⁰² In addition, more quality control existed in the Judicare Program than in the private practice of law.¹⁰³ No reports of representational problems provoked any reported major public concerns. Further, although concerned about the escalating cost of the program when he inherited it in 1979, John Michener, the Director of the MLSP who administered the program, did not identify any quality-of-service issues.¹⁰⁴

Periodically, legal services studies and evaluations in Maryland have called for the reinstatement—to some extent—of the Judicare Program. Legal services experts at one time thought Judicare was an effective and cost-efficient way to supplement the primary role of the LAB, agreeing that it was and should be the central provider of legal services to the poor.

For example, in 1988, the Advisory Council of the MLSC conducted an extensive assessment of Maryland's legal services delivery system and the unmet legal needs of the poor.¹⁰⁵ As part of its assessment, the Council surveyed "judges, bar leaders, and human services organization directors," many of whom recommended both "expanding the funding to the State's staffed legal services organizations serving the poor . . . [and increasing] funding to the Judicare program."¹⁰⁶ In its recommendations, the Council said

[i]f 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."¹⁰⁷

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

102. *Id.* at 47–48.

103. For example, private lawyers who were not participating in Judicare did not submit fee applications that required the approval of a local judge or lawyer or the statewide bar committee, whereas lawyers participating in Judicare were required to do so. *Id.*

104. Interview with John Michener, *supra* note 95.

105. 1988 LEGAL SERVICES ACTION PLAN, *supra* note 30.

106. *Id.* at 22, 24.

107. *Id.* at 35.

that are underserved by existing legal services programs in the jurisdiction,” and work to support “the mutual roles of private attorneys and legal services programs in providing legal services to the poor.”¹⁰⁸

Four years later, in 1992, the Advisory Council on Family Legal Needs of Low Income People asked its Court Access for Poor Persons Committee to “identif[y] the legal services programs that seem most cost effective in providing domestic legal services to low-income individuals.”¹⁰⁹ The Council began with the Judicare Program, saying “[t]he 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.”¹¹⁰ 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.”¹¹¹

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

[t]he 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.¹¹²

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

108. *Id.* at 36–37.

109. ADVISORY COUNCIL ON FAMILY LEGAL NEEDS OF LOW INCOME PEOPLE: A JOINT PROJECT OF THE MD. LEGAL SERVS. CORP. AND THE UNIV. OF BALT. SCH. OF LAW, INCREASING ACCESS TO JUSTICE FOR MARYLAND’S FAMILIES 49, 57 (Mar. 1992).

110. *Id.* at 57.

111. *Id.* at 58.

112. *Id.* The Council reported 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.

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. 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 [sic], 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.¹¹³

C. The Arguments For and Against Involving Private Attorneys, on a Reduced Fee Basis in the Delivery of Legal Services to the Poor

Based upon my past studies, I believe that sound arguments can be made in favor of increasing the number of private attorneys who, on a reduced fee basis, provide civil legal services to Maryland's poor. Further, experimental, locally administered Judicare projects should be developed as vehicles for increasing the involvement of private attorneys in delivering family law related legal services to poor individuals.¹¹⁴ Maryland's experience with private attorneys in reduced fee programs has demonstrated that private attorneys can provide competent, effective and cost-efficient legal services to the poor, especially in litigating contested cases. In recommending the Judicare structure, I said that

[a]lthough the model I recommend has features of the existing private attorney [Contested Custody

113. *Id.* at 58-59.

114. 2007 MILLEMANN REPORT, *supra* note *, at 5, 7.

Representation] 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.¹¹⁵

This recommendation was accepted, and in January 2008, the MLSC announced grant awards for a “Judicare Pilot in Maryland,” with the purpose of “expand[ing] representation in family law matters at reduced fees.”¹¹⁶ I emphasize the limits of my recommendation, which, in turn, limits the scope of competing arguments.

First, a Judicare model is not recommended to replace the staff model or become the primary method for delivering legal services to the poor in Maryland. Rather, 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.

In comparison, the movement in many countries in which Judicare is the dominant model for delivering legal services to the poor is to diversify in the other direction by adding staff components to the predominantly private lawyer model.¹¹⁷ The common goal is to strike a reasonable balance between these components so that benefits of both can be realized.¹¹⁸

Second, because my purpose in recommending a Judicare model is to increase the amount of legal services available to the poor,

115. *Id.* at 7.

116. See Maryland Legal Services Corporation, <http://www.mlsc.org/news.htm#story1> (last visited Feb. 18, 2009). MLSC awarded four grants from January 1 through June 30, 2008 to create these pilot projects to the Allegany Law Foundation, Community Legal Services of Prince George’s County, Harford County Bar Foundation, and Maryland Volunteer Lawyers Service. *Id.*

117. 2007 MILLEMANN REPORT, *supra* note *, at 85–89.

118. See, e.g., DAVID LUBAN, LAWYERS AND JUSTICE: AN ETHICAL STUDY 272 (1988) (demonstrating mixed models); James Gordley, *The Meaning of Equal Access to Legal Services*, 10 CORNELL INT’L L.J. 220 (1977) (supporting the concept of mixed models of staff and private lawyer delivery systems).

any Judicare funding should be with new resources, not resources now committed to the staff model.

Third, pilot Judicare 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.

In supporting Judicare, I do not question the critical importance of the staff model. The poor often have interrelated legal problems that involve a variety of legal specialty practices. Staff lawyers are leaders in poverty law specialty practices and they are in a good position to identify and seek to address systemic problems that affect the poor.¹¹⁹ These considerations support a primary role for staff programs in delivering legal services to the poor. However, they do not support an exclusively staff model.

In Maryland, many private lawyers have as much expertise and competence in practice areas that affect the poor, like family law, as do staff lawyers in legal services programs. Moreover, approximately half of a million people in Maryland qualify for free legal aid, but are financially ineligible; in other words, they are not poor enough for the services offered by the LAB.¹²⁰ The staff program, at least, cannot help these Marylanders obtain the legal representation that they need.

In addition, data from the reduced fee programs in Maryland demonstrate that private lawyers, working on a reduced fee basis, provide much higher levels of required litigation services in contested cases than do staff attorneys.¹²¹ The cost of private lawyers' more intensive litigation services is substantially less than the cost of the less intensive services provided by the staff attorney model.¹²²

It also should be readily possible to achieve the benefits of the holistic staff model—referrals of interrelated legal problems to specialized staff attorneys—while maintaining the benefits of the private attorney model. The only thing that changes is that the private family lawyer, rather than the staff family lawyer, makes the referral to the other specialized staff attorney.

119. However, staff programs that are funded by the national Legal Services Corporation, like the Legal Aid Bureau, also are subject to class action, lobbying, and administrative advocacy restrictions that can make it very difficult to achieve systemic change. *See supra* Part II.

120. *See supra* Part III.A.

121. *See supra* Part IV.A.1.

122. *Id.*

In sum, the development of competent and effective reduced fee private attorney programs in Maryland, including in the Contested Custody Representation Project¹²³ and the courthouse-based legal information and advice centers,¹²⁴ demonstrates that the *Judicare* model can successfully supplement the staff model.

Historically, this was true as well. The “defunding” of *Judicare* was not responsive to a perceived problem in the quality of services, but rather occurred to transfer funds to the LAB to help it survive federal funding cuts, and two subsequent Maryland legal needs studies praised the defunded *Judicare* Program.¹²⁵

Indeed, in August, 2007, a Work Group on Self-Representation in the Maryland Courts, an internal committee of the state judiciary, called for the re-instatement of *Judicare*. It said that “many litigants [in Maryland] remain, against their wishes, without counsel when their case is really inappropriate for self-representation.”¹²⁶ To respond to this problem, the Work Group supported “efforts to revive a *Judicare*-style legal services model in the state.”¹²⁷ It said that

a revived *Judicare*-style program could greatly enhance access to representation in a broad range of case types. The work group recommends that the Judiciary support the initiative, that it collaborate with others to fund pilots in several locations around the state, and that efforts be made to secure long-term funding for a statewide project.¹²⁸

A 1980 Congressional report delivered by the LSC expressly concluded that, among staff programs and *Judicare* programs, there was “not . . . a single best approach for delivering legal assistance to the poor in all circumstances.”¹²⁹ Rather, it found that a mix of staff and private attorneys was successful, depending on local conditions

123. *Id.*

124. See *supra* Part IV.A.2; see also MICHAEL A. MILLEMAN, ET AL., HANDBOOK ON LIMITED SCOPE LEGAL ASSISTANCE—A REPORT OF THE MODEST MEANS TASK FORCE 18–19 (ABA Section of Litigation, 2003).

125. See *supra* Part IV.B.

126. MARYLAND JUDICIARY, CLEARING A PATH TO JUSTICE: A REPORT OF THE MARYLAND JUDICIARY WORK GROUP ON SELF-REPRESENTATION IN THE MARYLAND COURTS 13–14 (Aug. 2007), <http://www.courts.state.md.us/publications/pdfs/selfrepresentation0807.pdf>.

127. *Id.* at 14.

128. *Id.*

129. LEGAL SERVS. CORP., THE DELIVERY SYSTEMS STUDY: A POLICY REPORT TO THE CONGRESS AND THE PRESIDENT OF THE UNITED STATES ii (June 1980) [hereinafter 1980 LEGAL SERVS. CORP., REPORT].

and program management.¹³⁰ Two of the Judicare models examined by the Congressional report were based on the concept of Judicare and staff as complementary models, rather than as rivals in a zero-sum contest.¹³¹

Consistent with this theme of cooperation, the Corporation found that “[t]he Judicare supplement to a staff attorney program . . . could be a viable delivery model in situations where the parent staff attorney organization would do the necessary impact work.”¹³² Similarly, the primarily Judicare model with a staff attorney component clearly passed the Corporation’s “impact” standard.¹³³

The report also found all three Judicare models fulfilled the performance standard for quality of legal help.¹³⁴ The definition of quality depended upon peer-review analysis of each case handled based on twelve separate factors. These factors included: knowledge of facts, knowledge of relevant law, communication with client, strategy formation and selection, preparation for litigation, investigation, research, objective selection, and negotiating/bargaining.¹³⁵ The report found that “all the private attorney models tested met the standard set by the staff attorney program.”¹³⁶

Finally, Judicare remains an important model for delivering legal services to the poor throughout the world, and a less prevalent, but still potentially important, model in this country as well. At least one state, Wisconsin, uses a Judicare model to provide substantial legal services to the poor; and several other states use the Judicare model to supplement staff models.¹³⁷

In the majority of industrialized nations, the Judicare model remains the dominant system for delivering legal services to the poor.¹³⁸ Interestingly, Great Britain—the international leader in Judicare—has added staff-type components to its primarily private lawyer model.¹³⁹ Maybe over time, the nations will meet in the middle, as some of the earliest legal services advocates have suggested.¹⁴⁰ In sum, the key question ought to be how, not whether, to integrate

130. *Id.*

131. *Id.* at 24.

132. 1980 LEGAL SERVS. CORP., REPORT, *supra* note 129, at ii.

133. *Id.* at 7.

134. *Id.* at 9.

135. *Id.* at 118.

136. *Id.* at 116.

137. 2007 MILLEMANN REPORT, *supra* note *, at 71, 78–81.

138. *Id.* at 81.

139. *Id.* at 85–86.

140. *See supra* Part IV.B.

Judicare and the staff model to create the most effective and comprehensive legal services delivery *system*.

V. CONCLUSION

Over last decade, the MLSC and the AOC have taken important steps to help support and to create reduced fee private attorney projects that provide desperately needed legal services to parties in family cases who seek to protect some of the most important legal interests recognized by the law.¹⁴¹ More recently, the MLSC, with the support of the AOC, embarked on an exciting experiment by funding four Judicare pilot projects through which private lawyers, who will be paid reduced fees, will provide additional representation to indigent litigants in family cases.¹⁴² At the same time, both organizations are providing even greater support for and resources to staff legal services programs in Maryland.

In my view, all of this is as it should be. The ideal legal services delivery system for the poor should include a coordinated mixture of legal services and providers. Such a mixed model builds on the strengths of the public and private practice models. We should view them not as adversarial competitors but rather as collaborative partners. The actions taken by the MLSC and AOC, in my view, are welcome steps in that direction.

141. *See supra* Parts III.B, IV.A.

142. *See supra* Part IV.C.

