

**Justice in the Domestic Relations Division  
of Philadelphia Family Court:  
A Report to the Community**

**April 2003**

**Women's  
Law Project**

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Published by the **Women's  
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## **Preface**

The Women's Law Project (WLP) is a public interest law center, committed to fighting discrimination and injustice against women and to advancing the legal, health, economic, and societal status of women and their families. The WLP has a long and dedicated history of advocacy and is recognized as a national leader in the field of women's rights, as well as a unique resource for women in Philadelphia and other parts of Pennsylvania. It has been our goal since the WLP's founding in 1974 to provide women with knowledge to empower them to address the problems in their own lives, to work to eliminate gender discrimination in laws and institutions, and to promote changes in the legal system that directly affect the status and opportunities of women.

The WLP engages in high-impact litigation and leads advocacy, education, and public policy efforts on behalf of women and their families. Our vehicle for direct service to the community is a Telephone Counseling Service that has assisted more than 100,000 women in the Philadelphia area over the last twenty-five years by providing information about laws and legal procedures and referrals to social service and legal agencies. An alarmingly high number of calls to this service are from family law litigants without legal representation who seek information and assistance to negotiate the Domestic Relations Division of Philadelphia Family Court (Domestic Relations Division). The experiences of our callers in the Domestic Relations Division also provide direction for the WLP's targeted advocacy and litigation initiatives and have helped to generate this report.

## **Acknowledgments**

We wish to express our gratitude to the William Penn Foundation for its generous support of this project, which would have otherwise been impossible. We also wish to thank Jennifer Campbell, who designed the court observation project and patiently taught lawyers social science standards for data collection, and the WLP staff members Debra Rubin, Astra Outley, David S. Cohen, Lauren Sorrentino, and especially Kathy Kaib, who entered and helped analyze voluminous amounts of data. In addition, we thank our court observers, who sat through court proceedings and painstakingly filled out forms, and our telephone counselors, who year after year provide compassionate service to our callers. Our colleagues in the legal community deserve a special note of appreciation for their invaluable feedback and assistance. Most of all, we owe a debt of gratitude to all the women who have shared their experiences with us.

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Women's Law Project  
April 2003

## Summary of Contents

<b>Preface</b> .....	i
<b>Acknowledgments</b> .....	i
<b>List of Court Observation Tables</b> .....	ix
<b>List of Court Data Tables</b> .....	xi
<b>Executive Summary</b> .....	1
<b>I. Introduction</b> .....	10
<b>II. Summary of Methodologies for Research and Documentation of Consumer Experience</b> .....	13
<b>III. Standards and Findings</b> .....	17
<b>Area 1: Access to Justice</b> .....	18
1.1 Public Proceedings .....	18
1.2 Safety, Accessibility, and Convenience .....	23
1.3 Effective Participation .....	26
1.4 Courtesy, Responsiveness, and Respect .....	38
1.5 Affordable Costs of Access .....	44
<b>Area 2: Expedition and Timeliness</b> .....	50
2.1 Case Processing .....	50
<b>Area 3: Equality, Fairness, and Integrity</b> .....	55
3.1 Fair and Reliable Judicial Process .....	55
3.3 Court Decisions and Actions .....	72
3.4 Clarity .....	77
3.5 Responsibility for Enforcement.....	78
<b>Area 4: Independence and Accountability</b> .....	79
4.2 Accountability for Public Resources .....	79
4.4 Public Education.....	90
<b>Area 5: Public Trust and Confidence</b> .....	91
5.1 Accessibility .....	91
5.2 Expeditious, Fair, and Reliable Court Functions.....	91
<b>IV. Report Conclusions</b> .....	93
<b>V. Report Recommendations</b> .....	96
<b>Appendices</b> .....	99

## Table of Contents

<b>Preface</b> .....	i
<b>Acknowledgments</b> .....	i
<b>List of Court Observation Tables</b> .....	ix
<b>List of Court Data Tables</b> .....	xi
<b>Executive Summary</b> .....	1
Findings .....	4
Recommendations .....	7
<b>I. Introduction</b> .....	10
<b>II. Summary of Methodologies for Research and Documentation of Consumer Experience</b> .....	13
COURT OBSERVATION TABLE 1: Gender of litigants: protection from abuse and custody cases.....	14
COURT OBSERVATION TABLE 2: Race of litigants (petitioners and respondents) as compared to Philadelphia population.....	15
<b>III. Standards and Findings</b> .....	17
<b><u>Area 1: Access to Justice</u></b> .....	18
<b>1.1 Public Proceedings</b> .....	18
A. Background and Research .....	18
1. Access Allowed .....	20
2. Access Denied .....	21
B. Information and Data Collected .....	22
1. Narratives by WLP Telephone Counselors and Court Observers .....	22
2. Survey of WLP Telephone Counseling Callers.....	22
3. Testimony From Hearings on the Unmet Needs of Victims of Domestic Violence Before the Council of the City of Philadelphia, Committees on Public Safety and Public Health and Human Services .....	22
<b>1.2 Safety, Accessibility, and Convenience</b> .....	23
A. Background and Research .....	23
B. Information and Data Collected .....	24
1. Narratives by WLP Telephone Counselors and Court Observers .....	24
2. Survey of WLP Telephone Counseling Callers.....	24
3. Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System.....	24

4.	Testimony From Hearings on the Unmet Needs of Victims of Domestic Violence Before the Council of the City of Philadelphia, Committees on Public Safety and Public Health and Human Services .....	25
5.	Review of Court Information and Notices .....	25
<b>1.3</b>	<b>Effective Participation</b> .....	<b>26</b>
A.	Background and Research .....	26
B.	Information and Data Collected .....	28
1.	Court Observation .....	28
a.	Protection From Abuse.....	29
	COURT OBSERVATION TABLE 3: How thoroughly did the judge explain the process to the litigants in protection from abuse cases?.....	29
b.	Custody.....	30
	COURT OBSERVATION TABLE 4: How thoroughly did the judge explain the process to litigants in custody cases?.....	30
2.	Narratives by WLP Telephone Counselors and Court Observers .....	31
3.	Survey of WLP Telephone Counseling Callers.....	31
4.	Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System.....	32
5.	Testimony From Hearings on the Unmet Needs of Victims of Domestic Violence Before the Council of the City of Philadelphia, Committees on Public Safety and Public Health and Human Services .....	33
6.	Test Calls to Customer Service .....	33
7.	Review of Court Information and Notices .....	34
a.	Protection From Abuse.....	34
b.	Custody.....	36
<b>1.4</b>	<b>Courtesy, Responsiveness, and Respect</b> .....	<b>38</b>
A.	Background and Research .....	38
B.	Information and Data Collected .....	38
1.	Court Observation .....	38
a.	Protection From Abuse.....	39
	COURT OBSERVATION TABLE 5: How did the judges, court staff, and litigants treat each other in protection from abuse courtrooms? .....	39
	COURT OBSERVATION TABLE 6: How did the two primary protection from abuse judges treat litigants?.....	40
b.	Custody.....	41
	COURT OBSERVATION TABLE 7: How did the judges, court staff, and litigants treat each other in custody courtrooms? .....	41
2.	Narratives by WLP Telephone Counselors and Court Observers .....	42
3.	Survey of WLP Telephone Counseling Callers.....	42
4.	Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System.....	42

5. Testimony From Hearings on the Unmet Needs of Victims of Domestic Violence Before the Council of the City of Philadelphia, Committees on Public Safety and Public Health and Human Services .....	43
<b>1.5 Affordable Costs of Access .....</b>	<b>44</b>
A. Background and Research .....	44
1. Filing Fees .....	44
2. Other Costs .....	45
3. Counsel Fees, Access to Free Counsel, and Pro Se Assistance.....	45
B. Information and Data Collected .....	48
1. Court Observation .....	48
COURT OBSERVATION TABLE 8: In protection from abuse and custody cases, did either party have an attorney at the hearing?.....	48
2. Narratives by WLP Telephone Counselors and Court Observers .....	48
3. Survey of WLP Telephone Counseling Callers.....	49
4. Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System.....	49
5. Review of Court Information and Notices .....	49
<b><u>Area 2: Expedition and Timeliness .....</u></b>	<b>50</b>
<b>2.1 Case Processing.....</b>	<b>50</b>
A. Background and Research .....	50
TABLE A: Custody/Visitation Caseload Statistics .....	51
TABLE B: Protection From Abuse Caseload Statistics .....	51
TABLE C: Support Caseload Statistics.....	51
TABLE D: Divorce Caseload Statistics.....	52
TABLE E: All Domestic Relations Division Caseload Statistics .....	52
TABLE F: Civil Trial Division Caseload Statistics .....	53
TABLE G: Criminal Trial Division Caseload Statistics.....	53
B. Information and Data Collected .....	54
1. Survey of WLP Telephone Counseling Callers.....	54
2. Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System.....	54
<b><u>Area 3: Equality, Fairness, and Integrity.....</u></b>	<b>55</b>
<b>3.1 Fair and Reliable Judicial Process.....</b>	<b>55</b>
A. Background and Research .....	55
1. Due Process of Law .....	55
2. Compliance With Codified Law and Procedure.....	55
3. Local Court Practices .....	57
B. Information and Data Collected .....	58
1. Court Observation .....	58
a. Time Spent on Case.....	59



1) All Observations .....	59
a) Protection From Abuse .....	59
COURT OBSERVATION TABLE 9: Time spent on observed cases: protection from abuse .....	59
b) Custody .....	60
COURT OBSERVATION TABLE 10: Time spent on observed cases: custody .....	60
2) Procedural Hearings Versus Hearings on the Merits.....	60
a) Protection From Abuse .....	61
COURT OBSERVATION TABLE 11: Time spent on procedural hearings and hearings on the merits: protection from abuse .....	61
b) Custody .....	62
COURT OBSERVATION TABLE 12: Time spent on procedural hearings and hearings on the merits: custody.....	62
b. Time Spent on Case Relative to Representation .....	63
1) Protection From Abuse .....	63
COURT OBSERVATION TABLE 13: Was amount of time a litigant was given in a protection from abuse hearing related to whether the litigant had an attorney?.....	63
2) Custody .....	64
COURT OBSERVATION TABLE 14: Was amount of time a litigant was given in a custody hearing related to whether the litigant had an attorney?.....	64
c. Litigant Presentation of Evidence.....	65
COURT OBSERVATION TABLE 15: What types of evidence did litigants seek to present? .....	65
d. Litigant Challenges to Evidence.....	66
COURT OBSERVATION TABLE 16: Did litigants try to challenge evidence presented by opponents? .....	66
e. Judicial Development of Record .....	66
COURT OBSERVATION TABLE 17: Did the judge ask questions of the parties? .....	67
f. Judicial Development of Record and Representation.....	68
COURT OBSERVATION TABLE 18: Was there a relationship between whether the petitioner had counsel and whether the judge asked questions in custody hearings? .....	68
g. Allegations of Domestic Violence in Custody Cases.....	68
h. Testimony by Children .....	69
i. Continuing Case Without Issuing Order .....	69
j. Service of Process.....	69
2. Narratives by WLP Telephone Counselors and Court Observers .....	69
3. Survey of WLP Telephone Counseling Callers.....	71
4. Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System.....	71

5. Testimony From Hearings on the Unmet Needs of Victims of Domestic Violence Before the Council of the City of Philadelphia, Committees on Public Safety and Public Health and Human Services .....	71
<b>3.3 Court Decisions and Actions .....</b>	<b>72</b>
A. Background and Research .....	72
B. Information and Data Collected .....	73
1. Court Observation .....	73
COURT OBSERVATION TABLE 19: Was the amount of time spent on a custody case related to petitioner’s race? .....	74
COURT OBSERVATION TABLE 20: Was there a relationship between race of petitioner and whether petitioner had counsel in protection from abuse cases? .....	75
2. Testimony From Hearings on the Unmet Needs of Victims of Domestic Violence Before the Council of the City of Philadelphia, Committees on Public Safety and Public Health and Human Services .....	76
<b>3.4 Clarity .....</b>	<b>77</b>
A. Background and Research .....	77
B. Information and Data Collected .....	77
1. Narratives by WLP Telephone Counselors and Court Observers .....	77
<b>3.5 Responsibility for Enforcement .....</b>	<b>78</b>
A. Background and Research .....	78
B. Information and Data Collected .....	78
1. Narratives by WLP Telephone Counselors and Court Observers .....	78
2. Testimony From Hearings on the Unmet Needs of Victims of Domestic Violence Before the Council of the City of Philadelphia, Committees on Public Safety and Public Health and Human Services .....	78
<b><u>Area 4: Independence and Accountability .....</u></b>	<b><u>79</u></b>
<b>4.2 Accountability for Public Resources .....</b>	<b>79</b>
A. Background and Research .....	79
1. FJDP Budget Allocations .....	82
TABLE H: First Judicial District of Pennsylvania Court of Common Pleas Budget FY2002-2003 .....	84
TABLE I: First Judicial District of Pennsylvania Family Court Budget Allocation FY2002-2003 .....	85
2. Personnel .....	86
TABLE J: First Judicial District of Pennsylvania 2003 Allocation of Staff: Family Court and Trial Division .....	87

3. Resources Relative to Caseload.....	87
TABLE K: First Judicial District of Pennsylvania 2001 Caseload Statistics: Family Court and Trial Division.....	88
4. Conclusions .....	88
<b>4.4 Public Education.....</b>	<b>90</b>
<b><u>Area 5: Public Trust and Confidence .....</u></b>	<b>91</b>
<b>5.1 Accessibility .....</b>	<b>91</b>
<b>5.2 Expedient, Fair, and Reliable Court Functions .....</b>	<b>91</b>
A. Background and Research .....	91
B. Information and Data Collected .....	91
1. Narratives by WLP Telephone Counselors and Court Observers .....	91
2. Survey of WLP Telephone Counseling Callers.....	92
<b>IV. Report Conclusions .....</b>	<b>93</b>
<b>V. Report Recommendations.....</b>	<b>96</b>
<b>Appendices .....</b>	<b>99</b>
A. Methodologies for Research and Documentation of Consumer Experience .....	A1
B. Family Court Information Forms—PFA and Custody .....	B1
C. Telephone Counseling Survey of Family Court Litigants.....	C1
D. Family Court Tester Calls to Customer Service.....	D1
E. Pro Se Assistance Programs .....	E1
F. FJDP Summary of Projects and Contracted Funds FY2001 and 2002 .....	F1
G. Summary of Findings and Recommendations.....	G1

**List of Court Observation Tables**

COURT OBSERVATION TABLE 1: Gender of litigants: protection from abuse and custody cases ..... 14

COURT OBSERVATION TABLE 2: Race of litigants (petitioners and respondents) as compared to Philadelphia population ..... 15

COURT OBSERVATION TABLE 3: How thoroughly did the judge explain the process to the litigants in protection from abuse cases? ..... 29

COURT OBSERVATION TABLE 4: How thoroughly did the judge explain the process to litigants in custody cases? ..... 30

COURT OBSERVATION TABLE 5: How did the judges, court staff, and litigants treat each other in protection from abuse courtrooms? ..... 39

COURT OBSERVATION TABLE 6: How did the two primary protection from abuse judges treat litigants? ..... 40

COURT OBSERVATION TABLE 7: How did the judges, court staff, and litigants treat each other in custody courtrooms? ..... 41

COURT OBSERVATION TABLE 8: In protection from abuse and custody cases, did either party have an attorney at the hearing? ..... 48

COURT OBSERVATION TABLE 9: Time spent on observed cases: protection from abuse ..... 59

COURT OBSERVATION TABLE 10: Time spent on observed cases: custody ..... 60

COURT OBSERVATION TABLE 11: Time spent on procedural hearings and hearings on the merits: protection from abuse ..... 61

COURT OBSERVATION TABLE 12: Time spent on procedural hearings and hearings on the merits: custody ..... 62

COURT OBSERVATION TABLE 13: Was amount of time a litigant was given in a protection from abuse hearing related to whether the litigant had an attorney? ..... 63

COURT OBSERVATION TABLE 14: Was amount of time a litigant was given in a custody hearing related to whether the litigant had an attorney? ..... 64

COURT OBSERVATION TABLE 15: What types of evidence did litigants seek to present?..... 65

COURT OBSERVATION TABLE 16: Did litigants try to challenge evidence presented by opponents?..... 66

COURT OBSERVATION TABLE 17: Did the judge ask questions of the parties? ..... 67

COURT OBSERVATION TABLE 18: Was there a relationship between whether the petitioner had counsel and whether the judge asked questions in custody hearings? ..... 68

COURT OBSERVATION TABLE 19: Was the amount of time spent on a custody case related to petitioner’s race? ..... 74

COURT OBSERVATION TABLE 20: Was there a relationship between race of petitioner and whether petitioner had counsel in protection from abuse cases? ..... 75

## List of Court Data Tables

TABLE A: Custody/Visitation Caseload Statistics .....	51
TABLE B: Protection From Abuse Caseload Statistics .....	51
TABLE C: Support Caseload Statistics .....	51
TABLE D: Divorce Caseload Statistics.....	52
TABLE E: All Domestic Relations Division Caseload Statistics .....	52
TABLE F: Civil Trial Division Caseload Statistics .....	53
TABLE G: Criminal Trial Division Caseload Statistics.....	53
TABLE H: First Judicial District of Pennsylvania Court of Common Pleas Budget FY2002-2003.....	84
TABLE I: First Judicial District of Pennsylvania Family Court Budget Allocation FY2002-2003.....	85
TABLE J: First Judicial District of Pennsylvania 2003 Allocation of Staff: Family Court and Trial Division .....	87
TABLE K: First Judicial District of Pennsylvania 2001 Caseload Statistics: Family Court and Trial Division .....	88

## **Justice in the Domestic Relations Division of Philadelphia Family Court: A Report to the Community**

### **Executive Summary**

Tens of thousands of families come to the Domestic Relations Division of Philadelphia Family Court<sup>1</sup> (Domestic Relations Division) each year to resolve personal and intimate family matters involving divorce, child support, child custody, and domestic violence. Profound and life-altering decisions are made in this Court about where and with whom children will live, when and under what circumstances parents may see their children, and who will make decisions about the education, health care, and religious upbringing of children. This Court is called upon to determine who is the father of a child. It has the power and duty to collect millions of dollars in support and to assure that money is passed on to families. Its judges have the awesome responsibility of issuing orders to protect families from violence and stalking. And it has the authority to order the arrest and imprisonment of those who disregard its orders.

Unlike most other courts, lawyers are rarely found in these courtrooms. For the most part, individuals must represent themselves. The Court estimates that 85% to 90% of custody, support, and protection from abuse (PFA) litigants lack legal representation.<sup>2</sup>

Moreover, Family Court is the court that is held in the lowest esteem. Neither the Court itself nor the judges, lawyers, and litigants are accorded the respect and resources that they deserve, impeding fair treatment and negatively affecting the quality of life in our community.

The numbers of people who bring their family crises to the Domestic Relations Division is staggering. The Domestic Relations Division started the year 2001 with over 88,000 cases pending on its dockets and then received 53,000 new filings.<sup>3</sup> A small number of decision-makers—eleven judges and fourteen masters—must decide these

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<sup>1</sup> Family Court is a division of the state Common Pleas Court system in Philadelphia. Philadelphia's Common Pleas Court, Traffic Court, and Municipal Court constitute the First Judicial District of Pennsylvania (FJDP).

<sup>2</sup> David I. Grunfeld, *10 Questions for Judge Idee C. Fox, Supervising Judge, Domestic Relations Division, Philadelphia Court of Common Pleas Family Court*, THE PHILADELPHIA LAWYER, Fall 2002, at 34.

<sup>3</sup> Zygmunt A. Pines, Court Administrator of Pennsylvania, *2001 Caseload Statistics of the Unified Judicial System of Pennsylvania 57-65*, at [http://www.courts.state.pa.us/Index/Aopc/Research/stats01/2001 Report.pdf](http://www.courts.state.pa.us/Index/Aopc/Research/stats01/2001%20Report.pdf) [hereinafter *2001 Caseload Statistics*]. We rely on the data published by the Administrative Office of Pennsylvania Courts (AOPC) as the authoritative source for caseload statistics but note that the FJDP reports 85,772 new filings in 2001 for Domestic Relations Division cases in Philadelphia. Philadelphia Courts of the First Judicial District, *First Judicial District Testimony Presented on Behalf of Philadelphia Courts of the First Judicial District of Pennsylvania to Philadelphia City Council, Fiscal Year 2004 Operating Budget*, Attachment B (2003) [hereinafter *First Judicial District Testimony FY2004*].

cases.<sup>4</sup> Two judges sitting full time handle all of the PFA petitions, which in 2002 exceeded 14,000 in number.<sup>5</sup>

For years, the Women's Law Project (WLP) has heard accounts from women who have had difficulties navigating the domestic relations judicial process and negative experiences trying to present their cases. These calls come to us through our Telephone Counseling Service, which provides information to thousands of callers each year to help them negotiate family law proceedings without legal representation. The callers are confused, angry, and sometimes in danger. In response, we have developed and distributed consumer information, assisted women in learning how to represent themselves, advocated for numerous specific changes at the Court, and even brought litigation. However, our efforts and those of other public interest advocates have been piecemeal at best and have made only incremental improvements to an over-burdened judicial system. The overall experience of families served by this Court remains one characterized by frustration and confusion as well as a sense of powerlessness.

From October 2000 through March 2003, the WLP undertook to learn all it could about the Domestic Relations Division. We collected and analyzed information utilizing the Trial Court Performance Standards, which were released in 1990 by the Commission on Trial Court Performance Standards under the auspices of the National Center for State Courts (NCSC) and funded by the Bureau of Justice Assistance, U.S. Department of Justice.<sup>6</sup> The Commission established five broad performance categories that included twenty-two standards and encompassed the fundamental purposes and responsibilities of courts: Access to Justice; Expedition and Timeliness; Equality, Fairness, and Integrity; Independence and Accountability; and Public Trust and Confidence.

We researched case statistics and budget allocations, observed custody and PFA courtroom proceedings and courthouse operations, and talked to attorneys who practice in the Court and litigants who represent themselves in proceedings. We investigated pro se assistance programs around the country and reviewed existing reports examining family law proceedings in Philadelphia specifically and Pennsylvania generally. While the Trial Court Performance Standards and a variety of surveys used in court observations performed by other organizations provided some useful ideas for measuring performance,

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<sup>4</sup> See The Philadelphia Courts, First Judicial District of Pennsylvania, Courts of the District, Family Division, at <http://courts.phila.gov/cpfd.html> (last visited March 3, 2003). The Domestic Relations Division also has approximately forty-nine hearing officers who are non-lawyers and perform ministerial functions that sometimes resolve cases. See Telephone Directory, Domestic Relations Division - 34 South 11th Street (Jan. 15, 2002) (internal court document on file with WLP). We do not consider them to be decision-makers.

<sup>5</sup> *Hearing on Bill 020613 Before the Committees on Public Safety and Public Health & Human Services* 19 (Phila. 2002) [hereinafter *Hearings*] (testimony of the Honorable Myrna Field, Administrative Judge, Family Court Division).

<sup>6</sup> See Pamela Casey, *Defining Optimal Court Performance: The Trial Court Performance Standards*, CT. REV., Winter 1998, at 24, 24.



we found to our surprise that for the most part we had to design our own data collection tools. We hired a social science researcher with extensive experience in designing and evaluating large research projects to assist the WLP staff in designing and implementing the project.

This report is a compilation of this work. Some of our findings surprised us; some documented what we knew to be true; others called for further investigation. Some disappointed us. Some shocked us.

Based on the research and information we collected, we have concluded that the Domestic Relations Division's performance falls far short of the standards set by the Commission on Trial Court Performance Standards. The most shocking finding we established is that the Domestic Relations Division is grossly underfunded.<sup>7</sup> This fact is so central to the operations of the Court that it significantly undermines the Court's ability to execute its responsibilities to standard in the other areas of performance. This underfunding is particularly frustrating given the dedication and clear goals of the administration of both Philadelphia Family Court and the Domestic Relations Division to improve the functioning of the Court. We cannot help but conclude that the Court will never be able to achieve its goals if maintained at its current woefully inadequate level of economic support and personnel.

We reached our conclusion regarding the inadequate funding of the Domestic Relations Division through a difficult but persistent search for and tedious analysis of public budget records.<sup>8</sup> To our dismay, we learned that the First Judicial District of Pennsylvania (FJDP) has budgeted in such a way as to accumulate large savings at the expense of providing basic services to one of its courts.<sup>9</sup> The FJDP accumulated more than \$36 million in "savings" since 1992, with over \$7 million accumulated each year between 1999 and 2001; at 2002 budget hearings, FJDP administrators testified that the FJDP expected to have \$15 million on hand in surpluses by February 2003.<sup>10</sup>

The annual savings exceed the total funding provided by the city of Philadelphia to support the PFA, custody, and divorce functions of the Domestic Relations Division, which, according to our calculations, amounted to approximately \$4.4 million in the 2003 budget.<sup>11</sup> The savings have been diverted to a court improvement account reserved for technology and capital projects, such as the construction of "state of the art" courtrooms

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<sup>7</sup> There may be a threshold question as to whether the FJDP is adequately funded. The WLP does not have the tools or capacity to answer this question and has not attempted to do so.

<sup>8</sup> First Judicial District of Pennsylvania Court of Common Pleas, Municipal Court & Traffic Court FY2003 General Fund & Grants Revenue Operating Budget December 12, 2001 [hereinafter Operating Budget FY2003].

<sup>9</sup> *Philadelphia Courts of the First Judicial District, First Judicial District Testimony Presented on Behalf of Philadelphia Courts of the First Judicial District of Pennsylvania to Philadelphia City Council, Fiscal Year 2003 Operating Budget*, Attachment B (2002) [hereinafter *First Judicial District Testimony FY2003*].

<sup>10</sup> *Id.*

<sup>11</sup> See Operating Budget FY2003, *supra* note 8.

in City Hall for the Trial Division. In the meantime, the technological and capital needs of the Domestic Relations Division have not been addressed, nor have the other resources that are imperative to the administration of justice been supported.

As this report goes to press, it appears that the days of “saving” and “surpluses” are over. In its testimony presented to City Council in support of its 2004 budget, the FJDP stated that the budget it presented incorporates certain agreements reached in settlement negotiations of a lawsuit it filed against the city.<sup>12</sup> As reported by the FJDP, these negotiations have resulted in the elimination of the surplus.<sup>13</sup>

## Findings

Summarizing our findings under the rubric of the five areas of court performance analyzed, we found:

- **Justice is elusive for many litigants in the Domestic Relations Division.** While the door has been cracked open, unlike domestic relations proceedings throughout the Commonwealth, domestic relations proceedings in Philadelphia are for the most part behind closed doors with little to no public access. Denying public access is blatantly unconstitutional. This closed structure deprives litigants of the accompaniment of support persons, as well as the benefit of public accountability and education that results from public scrutiny. The facility is too small to accommodate the litigants and the public, difficult to navigate, and unsafe. It is also dirty and unkempt by mid-day. Unrepresented litigants are not provided with sufficient information and assistance to understand the proceedings or their rights and are subjected to lengthy waits. Hearings are brief and often incomplete, requiring multiple return visits over many months for the same matter. Non-English speaking litigants are not afforded language access. Out of thirty-six test calls made by the WLP to the court’s Customer Service Unit for telephone assistance, not one time did the Court even answer the telephone. While most court personnel are courteous and respectful, there are serious instances of disrespectful treatment. The costs of legal representation and litigation and lack of information about fee waivers and pro bono resources leave most litigants without the resources needed to present their cases effectively.
- **In spite of efforts to improve timeliness of case processing, serious backlogs remain.** Insufficient resources and personnel have not allowed the Domestic Relations Division to eliminate significant backlogs despite its best efforts. Except for support, the backlogs are increasing. These backlogs generate delays

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<sup>12</sup> *First Judicial District Testimony FY2004*, supra note 3, at 2.

<sup>13</sup> See *FY '04 Operating Budget Testimony Before the Committee of the Whole 1991-92* (Phila. 2003) [hereinafter *FY '04 FJDP Operating Budget Testimony*] (testimony of Honorable Massiah-Jackson, President Judge, Philadelphia Court of Common Pleas); *id.* at 1993 (testimony of Joseph A. Cairone, Court Administrator, FJDP).

that cause injustice and hardship for families in distress and unnecessarily leave families in limbo and sometimes in danger.

- **Equality, fairness, and integrity are undermined by the lack of assistance, due process, and time provided to litigants and the rendering of decisions that are inconsistent with applicable legal standards and difficult to enforce.** The prevalence of women as petitioners in family law matters raises questions about whether gender bias contributes to the Court's low prestige and insufficient resources. In addition, gender bias studies have shown that cultural stereotypes about women's roles in marriage and society may distort the Court's application of substantive law and subject women to condescension, indifference, and hostility.<sup>14</sup> Information collected indicates that applicable legal standards are not always observed, particularly in the consideration of abuse in custody proceedings, leaving families at risk.

Litigants are not accorded due process in many respects. Lacking representation, litigants rarely present tangible evidence or witnesses or object to the introduction of the opponent's evidence. The Court provides them with no information about their rights to do so and little time to present their case. Hearings are brief: 75% of protection from abuse cases and nearly 50% of custody cases are completed in less than ten minutes. Continuously changing procedures (created with good intentions to improve timely processing of cases) that are not adequately disseminated leave litigants in the dark about how to move through the process and prove their case. Once they leave the courthouse, litigants face daunting challenges enforcing court orders.

- **Failure to provide the Court with sufficient resources renders it incapable of properly serving the numbers of parents and children who must turn to it for safety and stability in their family life.** The FJDP fails to allocate sufficient and equitable funding to the Domestic Relations Division, particularly in light of the \$36 million surplus that accumulated from 1992 to 2002. This misallocation results in severe under-funding of custody, divorce, and protection from abuse cases and raises serious questions about the ability of the Domestic Relations Division to mete out justice to the families so desperately in need of intervention. The FJDP also fails to be accountable to the public by not making budget information accessible to the public and by not informing the community about its services.
- **Barriers to access, fairness, and resources lead to lack of confidence and trust in the Court.** The problems identified throughout this report undermine the public's and litigants' confidence in this Court.

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<sup>14</sup> LEORA N. ROSEN & MICHELLE ETLIN, THE HOSTAGE: CHILD SEX ABUSE ALLEGATIONS IN CUSTODY DISPUTES 141-42 (1996).

In essence, we found that there is a crisis in the Domestic Relations Division that has been largely invisible. Words are inadequate to convey the experiences of those who come in contact with this Court: of judges facing long lists of serious cases each day, rarely with lawyers available to present the facts and offer argument or witnesses; of fearful women huddled in bathrooms awaiting hearings on their PFA petitions while the alleged abusers sit in the waiting room; of parents seeking custody of their children and not knowing the difference between legal custody and physical custody; and of family members or friends waiting in the alleyway entrance because they were not allowed in the building or courtroom to provide support. **A court in crisis cannot serve families in crisis.**

We have formulated several concrete recommendations that the Court can implement in the short term. Accountability for resource allocation is fundamental; the FJDP must make publicly available the manner in which it allocates resources among its component courts and their divisions and spends taxpayer funds. With respect to the Domestic Relations Division, our primary recommendations are that the FJDP allocate funds to fulfill the constitutional mandate of open court, increase and improve security, and provide pro se litigants with the information that will help them navigate the family law process by themselves. In addition, the FJDP should monitor itself, using the Trial Court Performance Standards as criteria by which to measure performance, and provide more public reporting and accountability for its budget, scheduling, and timeliness. Finally, a long-term strategy must be developed. In order to do so, the Court must reach out to the larger community, including the public interest legal community and the Philadelphia Bar Association, and engage key stakeholders in the community at large.

We hope this report will bring to light the complexities, challenges, and conditions of the Domestic Relations Division<sup>15</sup> and that it will provide the foundation to engage more Philadelphians in advocacy efforts to obtain greater justice for families.

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<sup>15</sup> We also want to call to readers' attention that this report represents only half of the picture in Family Court. The Juvenile Division of Family Court, which handles child abuse and neglect and juvenile offenders cases, poses a whole set of additional problems and needs that have also been documented in recent years. *See, e.g.*, Philadelphia Public Interest Bar and Advocacy Community, A REPORT BY PHILADELPHIA'S PUBLIC INTEREST BAR AND ADVOCACY COMMUNITY ON DEPENDENT COURT RESOURCES AND THE NEED FOR JUDGES (2001), available at [http://www.jlc.org/home/updates/updates\\_links/report\\_philafamilycourt.htm](http://www.jlc.org/home/updates/updates_links/report_philafamilycourt.htm) [hereinafter PHILADELPHIA PUBLIC INTEREST BAR REPORT].

## **Recommendations**

This report highlights many areas in which improvement is needed to assure access to justice and compliance with the Trial Court Performance Standards. In some areas, we have formulated concrete recommendations that the Court can implement in the short and the long term. In other areas, we have recommended processes for developing long term strategies for improvement.

### **Funding**

- Improve funding to the Domestic Relations Division to address the critical issues identified in this report.
- Reform current budgeting practices to eliminate surpluses when basic needs are unfunded and to improve allocation of resources to address more equitably the needs of all litigants.
- Develop and make public information about allocation of funds, resources, and personnel within the Philadelphia court system by division.
- Provide a public accounting on the source and use of the “Court Improvement Account Fund” (surplus), detailing expenditures to date and current and projected balances.
- Provide information to the public explaining why the “Court Improvement Account Fund” has not been available to fund the basic needs of the Domestic Relations Division.

### **Public Access**

- Fulfill the constitutional mandate of open court by addressing the barriers to public access inherent in the courthouse in its current location. In the short term, the 34 South 11th Street courthouse should be renovated. In the long term, the operations of the Domestic Relations Division should be relocated to a more appropriate facility.

### **Security**

- Increase the security staff so that every courtroom, waiting area, hallway, and area used by the public and litigants has security personnel.
- Institute and publicize safety options for litigants, including escort service and staggered leaving times.
- Construct separate waiting rooms for opposing parties.
- Make security audits of the courthouse public.

## **Equality, Fairness, and Respect**

- Provide education and guidance to judicial and non-judicial staff to improve treatment of litigants, application of appropriate legal standards, and understanding of domestic violence.
- Provide appropriate and adequate interpreter services for non-English-speaking and hearing-impaired litigants.
- Reconstruct the Domestic Violence Unit so that litigants no longer are required to loudly communicate intimate personal information to court staff through the hole in the glass partition between the court staff and the public.

## **Pro Se Information and Assistance Programs**

- Publish and disseminate information for pro se litigants to help them negotiate the family law process by themselves, including information about the laws, court procedures, and litigant rights and responsibilities, presented in a way that they can understand, including in different languages and forms.
- Study programs for assisting pro se litigants that are in effect in other jurisdictions around the country, select those that would work best in Philadelphia, develop a funding plan, and implement such programs.<sup>16</sup>

## **Pro Bono Representation**

- Work with the Philadelphia Bar Association to increase the pool of attorneys available to provide pro bono representation in domestic relations cases.

## **Personnel**

- Assign more judicial and non-judicial staff to the Domestic Relations Division to expedite case processing and afford litigants a full and fair opportunity to present their cases.

## **Scheduling**

- Improve scheduling of cases to reduce fragmentation, multiplicity, and shortness of hearings. The inclusion of Philadelphia, by order of the Pennsylvania Supreme Court dated December 17, 2002, in the implementation of Pennsylvania Rule of Civil Procedure 1931, providing for trial continuity and prompt decisions in family law matters, has the potential to ameliorate scheduling problems.<sup>17</sup> The

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<sup>16</sup> See Appendix E for a summary of the types of pro se assistance programs courts around the country provide.

<sup>17</sup> *In re* Amendments to the Rules of Civil Procedure Relating to Domestic Relations, No. 379 (Pa. Sup. Ct. Dec. 17, 2002) (implementing Pa. R.C.P. 1931 in the First, Fifth, Twenty-third, and Forty-fifth Judicial

FJDP should enthusiastically support the implementation, evaluation, and integration of the pilot program with necessary resources.

### **Continuous Self-Monitoring**

- The Domestic Relations Division should engage in continuous self-monitoring by using the criteria established by the Trial Court Performance Standards, in cooperation with the community of persons who use the Court—lawyers, court personnel, and litigants.

### **Public Accountability and Responsiveness**

- The Court, the public interest legal community, and the Philadelphia Bar Association must come together to develop a long-term strategy that engages key stakeholders in the community at large and assures that families in crisis do not find themselves dealing with a court in crisis.

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Districts); Press Release, Administrative Office of Pennsylvania Courts, Supreme Court Announces Pilot Program to Ease and Expedite Family Court Matters (Dec. 17, 2002), *available at* <http://www.courts.state.pa.us/Index/aopc/pressreleases/prrel02d17.asp>.

## Justice in the Domestic Relations Division of Philadelphia Family Court: A Report to the Community

### I. Introduction

Tens of thousands of people file petitions with the Domestic Relations Division of Philadelphia Family Court each year seeking the Court's intervention in personal and familial relationships that have broken down, often with violence as a factor. Family Court is a division of the state Common Pleas Court system in Philadelphia which is a part of the First Judicial District of Pennsylvania (FJDP). It is the part of the court system with which the most individuals have contact and has by far the most staggering numbers of cases. It is the Court that addresses the most personal and intimate family matters and has the authority to profoundly alter family life. Yet, it is also the Court that is held in the lowest esteem. Family Court and its judges, lawyers, and litigants are not accorded the respect and resources that they deserve, impeding fair treatment and negatively affecting the quality of life in our community.

Family Court is divided into two divisions: the Juvenile Division, which is responsible for dependency (child abuse and neglect), delinquency, and adoptions, and the Domestic Relations Division, which has jurisdiction over custody, protection from abuse (PFA), support, and divorce cases. This report focuses on the Domestic Relations Division.<sup>18</sup>

The numbers of people who bring their family crises to the Domestic Relations Division is staggering. Publicly reported statistics for the year 2001 show over 53,000 new filings.<sup>19</sup> This figure does not include the numerous cases filed in previous years that remain active in the Domestic Relations Division's caseload. The Domestic Relations Division started the year 2001 with over 88,000 cases pending on its dockets.<sup>20</sup> A small number of decision-makers—eleven judges, including one senior judge, and fourteen masters—must decide these cases.<sup>21</sup> Two judges sitting full time must handle all of the PFA petitions,<sup>22</sup> which in 2002 exceeded 14,000 in number.<sup>23</sup> Of litigants in

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<sup>18</sup> Reports by members of the public interest legal community address the Juvenile Division. *See, e.g.*, PHILADELPHIA PUBLIC INTEREST BAR REPORT, *supra* note 15.

<sup>19</sup> *2001 Caseload Statistics*, *supra* note 3, at 57-65. We rely on the data published by the Administrative Office of Pennsylvania Courts as the authoritative source for caseload statistics but note that the First Judicial District of Pennsylvania reports 85,772 new filings in 2001 for domestic relations cases in Philadelphia. *See First Judicial District Testimony FY2004*, *supra* note 3, at Attachment B.

<sup>20</sup> *2001 Caseload Statistics*, *supra* note 3, at 57-65.

<sup>21</sup> The Philadelphia Courts, *supra* note 4. The Domestic Relations Division also has approximately forty-nine hearing officers who are non-lawyers and perform ministerial functions that sometimes resolve cases. *See Telephone Directory*, *supra* note 4. We do not consider them to be decision-makers.

<sup>22</sup> *Hearings*, *supra* note 5, at 34 (testimony of the Honorable Myrna Field, Administrative Judge, Family Court Division).

<sup>23</sup> *Id.* at 19.



custody, support, and PFA proceedings, 85% to 90% lack legal representation and must represent themselves (appear pro se).<sup>24</sup> These numbers alone generate serious concern about the Court's ability to give families the attention they deserve.

The Court is acutely aware of the enormity of the task it bears to serve such a large pro se population. While court administrators have been working hard to improve the experience of litigants in the Domestic Relations Division, they are severely limited by the amount of available resources.

The Women's Law Project, along with other public interest organizations, has strived for years to improve the way in which justice is meted out in the Domestic Relations Division. Yet, despite the WLP's extensive advocacy, piecemeal impact on court procedures, and positive working relationship with court administration, we recognized that we were not changing the overall experience of litigants in these proceedings. Women continue to call the WLP describing difficulties navigating the domestic relations judicial process and negative experiences trying to present their cases in court hearings. They are confused and do not know what to do or where to turn. They describe complex cases that require the presentation of supporting witnesses and expert testimony. While we provide the callers with information about the process, we do not have the capacity to represent them and recognize the limited opportunities for free legal services in the community. Lack of ability to pay by consumers and the inadequate number of free or low-cost lawyers for family law cases leaves most litigants without representation. The limited assistance provided by the Court itself leaves pro se litigants with virtually no ability to handle the staggering challenges of litigation. Justice for them is elusive at best.

While efforts are underway by the Philadelphia Bar Association to increase the level of pro bono representation by the Philadelphia bar, family law cases are the most difficult to refer for such representation. The Court must do more to provide greater assistance to and better treatment of these families.

Systemic change is needed to alter this picture. In order to develop a strategy for achieving such change, the WLP realized it needed to gain a complete understanding of the Domestic Relations Division, how it is administered, how it is funded, and how litigants and practitioners experience the Court. We also recognized that we needed to gather information in a systematic manner and apply recognized standards to what we learned in order to present an analysis and recommendations that would be accepted as unbiased and accurate. The information we gained confirms that this Court is under-resourced and over-burdened and fails to serve families in the way the law requires and justice demands.

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<sup>24</sup> Grunfeld, *supra* note 2, at 34.

Families in crisis do not need institutions in crisis—families need stability. Our hope is that this report provides a starting point for a joint and constructive effort to move in that direction.

The body of this report describes how we undertook to collect information and what we learned from our efforts. It outlines preliminary findings and recommendations for both immediate and long-range strategies to improve access to justice in the Domestic Relations Division.

## **II. Summary of Methodologies for Research and Documentation of Consumer Experience**

From October 2000 through March 2003, the WLP undertook to learn all we could about the Domestic Relations Division. We commenced this court research project by first internally clarifying our goals, developing a baseline of information in order to determine gaps in information, and developing an activities plan and timeline. We hired a social science researcher with extensive experience in designing and evaluating large research projects to assist the WLP staff in implementing the project. After determining the gaps in our understanding and developing hypotheses for verification, we identified the categories of information and data that we needed to collect and the methods of collection to pursue.

We determined that we needed to research the administrative organization and operations of the Court, caseload statistics, resources, financial barriers facing litigants, and the experience of consumers. Our sources of information included the WLP experience, publicly available documents about the Court, its budget and resources, and costs to litigants, as well as data collection and documentation of consumer experience.

We drew from seven sources to document the experience of consumers in the Domestic Relations Division:

1. Formal court observation and data collection of custody and PFA proceedings.
2. Narratives written by our telephone counselors and court observers describing the experience of both callers to our Telephone Counseling Service and litigants observed in court.<sup>25</sup>
3. Access to justice survey administered to callers to our Telephone Counseling Service after their Domestic Relations Division hearings.
4. Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System.
5. Testimony from Hearings on the Unmet Needs of Victims of Domestic Violence Before the Council of the City of Philadelphia, Committees on Public Safety and Public Health and Human Services.
6. Tester calls to the Domestic Relations Division's Customer Service Unit.
7. Review of Court information and notices.

A detailed description of the methodologies is provided in Appendix A.

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<sup>25</sup> The WLP's Telephone Counseling Service focuses on providing service and not recording information about our callers. Because of that and as explained in more detail in Appendix A, we realize that we do not have statistically significant numbers of responses to our narratives and surveys from callers to our Telephone Counseling Service. Therefore, the information and accounts gleaned from those sources and included in this report serve to illustrate the data we collected from other sources rather than to prove the findings of this report.

The anchor of this report and by far the most intensive source of information came from the court observation project, which involved a total of thirty-seven volunteers who observed and completed survey instruments for 935 PFA and custody proceedings over a twelve-month period. After eliminating duplications, our data set included 784 unduplicated observations.

<b>COURT OBSERVATION TABLE 1</b>				
<b>Gender of litigants: protection from abuse and custody cases.</b>				
<b>Gender</b>	<b>Petitioner (N=721)</b>		<b>Respondent (N=659)</b>	
	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>
<b>Female</b>	<b>72.8%</b>	<i>525</i>	<b>33.2%</b>	<i>219</i>
<b>Male</b>	<b>27.2%</b>	<i>196</i>	<b>66.8%</b>	<i>440</i>
<b>Total</b>	<b>100%</b>	<i>721</i>	<b>100%</b>	<i>659</i>

In nearly 75% of the observed PFA and custody proceedings, the filing party was a woman (525 of 721 observations) (Court Observation Table 1).

<b>COURT OBSERVATION TABLE 2</b>				
<b>Race of litigants (petitioners and respondents) as compared to Philadelphia population.</b>				
<b>Race</b>	<b>Protection From Abuse and Custody Litigants (N=1,270)</b>		<b>Census Data for Philadelphia, Year 2000</b>	
	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>
<b>African American</b>	<b>58.4%</b>	<b>741</b>	<b>42.6%</b>	<b>646,123</b>
<b>Asian</b>	<b>0.8%</b>	<b>11</b>	<b>4.4%</b>	<b>67,119</b>
<b>Caucasian</b>	<b>27.8%</b>	<b>353</b>	<b>42.5%</b>	<b>644,395</b>
<b>Hispanic/Latino</b>	<b>9.1%</b>	<b>116</b>	<b>8.5%</b>	<b>128,928</b>
<b>Other</b>	<b>3.9%</b>	<b>49</b>	<b>2.0%</b>	<b>30,985</b>
<b>Total</b>	<b>100%</b>	<b>1,270</b>	<b>100%</b>	<b>1,517,550</b>

Nearly 60% of litigants (741 of 1,270) were African American and slightly over 25% (353 of 1,270) were Caucasian. The number of African-American and Caucasian litigants observed contrasts with Year 2000 census figures for Philadelphia, which show that each group makes up slightly over 42% of the city's residents. Our observers found many fewer Asian litigants (less than 1%, or 11 litigants) than would be expected from the Philadelphia census figures, which show that Asians make up 4.4% of city dwellers. The only group that was represented in our sample in roughly the same proportion as in the city population was Hispanic/Latino litigants, who made up slightly over 9% of our sample (116)<sup>26</sup> (Court Observation Table 2).

A total of twelve judges in the Domestic Relations Division were observed. Only eleven judges hear domestic relations cases at any given time, but there was some

<sup>26</sup> U.S. Census Bureau, Census 2000 Redistricting Data (Public law 94-171) Summary File, Matrices PL1, PL2, PL3, and PL 4, available at [http://factfinder.census.gov/bf/\\_lang=en\\_vt\\_name= DEC\\_2000\\_PL\\_U\\_QTPL\\_geo\\_id=160000S4260000.html](http://factfinder.census.gov/bf/_lang=en_vt_name= DEC_2000_PL_U_QTPL_geo_id=160000S4260000.html).

rotation of judges in and out of the Domestic Relations Division during the data collection period.

The observation data was supported and supplemented by additional information obtained from observers, pro se litigants, and attorneys who practice in the Court, as well as from examination of the budget and organization of the Court.

### III. Standards and Findings

As the WLP commenced its work on gaining a comprehensive understanding of the Domestic Relations Division, we recognized the necessity of using objective standards to guide both the collection and evaluation of the information about the Court. We researched and studied existing standards of court operations. Our search led us to the Trial Court Performance Standards which were the product of the National Center for State Courts (NCSC). The NCSC established the Commission on Trial Court Performance Standards and obtained funding from the Bureau of Justice Assistance, U.S. Department of Justice, to support the Commission's work on developing performance standards and measures for state courts. The Commission's goal was to develop court performance standards that could be used to evaluate court structures and processes against performance and outcome.<sup>27</sup> The Commission established five broad performance categories that include twenty-two standards and encompass the fundamental purposes and responsibilities of courts. The five performance areas are:

1. Access to Justice
2. Expedition and Timeliness
3. Equality, Fairness, and Integrity
4. Independence and Accountability
5. Public Trust and Confidence

The performance of a court in these areas determines whether the court is successful in providing justice to those who seek its services. We recognized the utility of these performance areas as guideposts for our investigation and evaluation of the Domestic Relations Division and adopted them. We attempted to use the NCSC recommendations developed for measuring the standards.<sup>28</sup> However, many of the recommendations depend upon court participation, involvement of court staff, and review of court records in the measurement process. Since we did not engage the Court in a coordinated assessment, we were unable to pursue many of these recommendations for measuring the standards and therefore have not fully gathered information on several of the standards.<sup>29</sup> We have accumulated a significant amount of information, however. We summarize our findings with relevant supporting background, research, and data collected pursuant to these standards.

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<sup>27</sup> See Casey, *supra* note 6, at 24.

<sup>28</sup> U.S. DEP'T OF JUST., BUREAU OF JUST. ASSISTANCE, TRIAL COURT PERFORMANCE STANDARDS AND MEASUREMENT SYSTEM IMPLEMENTATION MANUAL (1997), available at <http://www.ncrjs.org/txtfiles/161567.txt> [hereinafter STANDARDS IMPLEMENTATION MANUAL].

<sup>29</sup> The standards that were either inapplicable to our study or for which we had insufficient access to information include, under Expedition and Timeliness: Compliance with Schedules and Prompt Implementation of Law and Procedure; under Equality, Fairness and Integrity: Juries, and Production and Preservation of Records; under Independence and Accountability: Independence and Comity, Personnel Practices and Decisions, and Response to Change.

## Trial Court Performance Standards

### Area 1: Access to Justice

*A responsive court ensures that judicial officers and other court employees are available to meet both the routine and exceptional needs of those it serves. . . . In keeping with the public trust embodied in their positions, judges and other court employees should reflect by their conduct the law's respect for the dignity and value of all individuals who come before, or make inquiries of, the court.*<sup>30</sup>

#### 1.1 Public Proceedings.

*Standard:* The trial court conducts its proceedings and other public business openly.

*Finding:* The Domestic Relations Division of Philadelphia Family Court does not completely open its proceedings to the public, but permits only limited categories and numbers of persons into the courthouse and courtrooms.

#### A. Background and Research

The U.S. and Pennsylvania Constitutions mandate that judicial proceedings be open to the public, except for good cause shown on a case by case basis.<sup>31</sup> Unlike domestic relations proceedings throughout the rest of the Commonwealth, domestic relations proceedings in Philadelphia were completely closed to the public for two decades. We increasingly became concerned about the lack of public oversight in this closed system, fueled in part by calls to the WLP from pro se litigants who described disturbing experiences in Court, ranging from offensive and biased comments from judges, to instructions to court reporters to cease recording the proceedings, to justice so swift that parties are given no time to present either testimony or witnesses.

After researching the constitutionality of the practice of closing the Court to the public, the WLP joined with its colleagues in the Philadelphia Bar Association's Delivery of Legal Services Committee to call for a halt to this practice. With the support of the Family Law Section of the Philadelphia Bar Association, the Delivery of Legal Services Committee introduced a resolution for adoption by the Board of Governors of the Bar Association supporting opening of the Court.<sup>32</sup> The resolution was adopted on August 3, 2000.

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<sup>30</sup> STANDARDS IMPLEMENTATION MANUAL, *supra* note 28, at 52.

<sup>31</sup> *Richmond Newspapers, Inc. v. Va.*, 448 U.S. 555 (1980) (interpreting U.S. CONST. amend. I); *Publicker Industries, Inc. v. Cohen*, 733 F.2d 1059 (3d Cir. 1984) (interpreting PA. CONST. art. I, § 11); *Katz v. Katz*, 514 A.2d 1374 (Pa. Super. 1986) (same).

<sup>32</sup> Phila. Bar Ass'n Bd. of Governors, *Resolution of the Philadelphia Bar Association Supporting Public Access to Domestic Relations Courtroom Proceedings in Philadelphia Family Court* (August 3, 2000), available at <http://www.philabar.org/member/governance/resolutions/resolution.asp?pubid=11030872000>.



In response, the Court raised concerns about inadequate security and space as a barrier to opening the Court completely. The facility at 34 South 11th Street where these proceedings are scheduled is an office building that was remodeled for use as a courthouse with very small courtrooms that do not accommodate visitors well. The second floor of the courthouse has eleven courtrooms. The judges sit behind a raised bench, and the remainder of the courtroom includes a witness chair, two tables with two chairs each for the litigants and their lawyers, and several desks for court employees who have responsibilities in connection with the proceedings in the courtroom. Prior to the Court's agreement to allow observers, the courtrooms included no seating for observers. After observers were allowed, chairs were placed in the back of each courtroom. The number of chairs ranges from three in the smallest courtroom to approximately nine in the larger courtrooms. The seating for observers occupies the same space occupied by court personnel working at desks with computers. There is no barrier between the litigants and others who may be in the courtroom.

Security is inadequate. Multiple security personnel work in the courthouse. Some security personnel are under the Sheriff's supervision, and some work for security firms contracting with the Court. There is a general issue with regard to the Court's ability to adequately train and supervise a workforce that is not under its direct control. There are also serious questions regarding the number of security personnel assigned to the courthouse, since there are not enough employees to cover every courtroom and public space and some cases involve high conflict and even the possibility of violence.

In light of these concerns, the Open Court Task Force, consisting of representatives of the Philadelphia Bar Association and of the Domestic Relations Division, was created in July 2000 to guide the opening of the Court. The plan was to open the Court in stages, letting in as many people who could be accommodated immediately (Phase I), followed by consideration of structural changes within the current building (Phase II), and ending with consideration of relocating to a more feasible space (Phase III). While progress was made on Phase I, a change of Administration at the Philadelphia Family Court ceased the Court's cooperation with Phases II and III. In addition, the signing of a new long-term lease on the building effectively eliminated the option of relocating the Court (Phase III). Under the current court administration, the Bar Association members of the Task Force resumed work with the Supervising Judge of the Domestic Relations Division to maintain the access achieved under Phase I. To date, no progress has been made on structural changes to the current site or relocation.

In response to our advocacy to open Domestic Relations proceedings (custody, PFA, divorce, and support) to the public, these proceedings have been opened only partially, as follows:

## 1. Access Allowed

Only certain categories of individuals have been given access.

- *Domestic violence advocates*, who have the right by statute and local court rule to accompany and assist their clients in PFA proceedings,<sup>33</sup> have been permitted to enter the courtroom with their clients. The Court has asked them to register with its Communication Officer so that their names can be given to security personnel to ease their entry into the courthouse.<sup>34</sup>
- *Persons who self-identify as observers* are permitted to enter the courthouse for the purpose of viewing courtroom proceedings only. This includes journalists, attorneys, or others who wish to observe proceedings for professional reasons, as part of their training, or to learn about how a particular jurist operates his or her courtroom.

When “observers” enter the courthouse, they must identify themselves as such, sign a guest register, and display a guest pass given to them by the Court. In no other Common Pleas courtroom in Philadelphia is this required. When they arrive at the courtrooms on the second floor, observers are to inform the court official in the waiting room of their presence and await permission to enter without disrupting any ongoing proceedings.

A number of problems have been encountered with this procedure:

- The Court does not provide any information to the public about the opportunity to observe. Only a handful of people know about this opportunity.
- Some first floor security officers have denied or delayed entrance to observers.
- Few observers are permitted in courtrooms because the small size of courtrooms only allows three to nine chairs for observers in courtrooms.
- Access is restricted to the second-floor courtrooms. Access to masters’ hearings or other non-courtroom proceedings is not permitted.
- Observers are unable to maintain anonymity. Judicial personnel frequently ask them to identify themselves.

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<sup>33</sup> 23 PA. C.S.A. § 6111; PHILA. CTY. CT. R. 1904.4.

<sup>34</sup> See analysis of Trial Court Performance Standard 3.1, *infra*, for discussion of court-imposed limitations on advocates.

- Judges have not all responded positively to having observers in their courtrooms. There have been occasions when judges do not permit observers to be in their courtrooms and when others have instructed observers to leave without making a good cause determination.

All of these problems have hampered the WLP's ability to collect comprehensive information through its court observation project.

- *Witnesses* with subpoenas may enter the courthouse and go to the courtroom waiting room.

## **2. Access Denied**

Large numbers of people are denied access. Having limited categories of individuals permitted to enter the courthouse and excluding others fails the constitutional standard of open court.

- *Witnesses* may have difficulty getting into the building or up to the courtroom waiting room. Witnesses often come to court without subpoenas and are required to wait outside the building, frequently in poor weather and cold conditions. Pro se litigants, who represent 85% to 90% of the litigants, often have no knowledge of the subpoena procedure. Subpoenas are available only at City Hall and must be obtained, completed, signed by a court official, and served prior to the court date. Witnesses who arrive at Court without subpoenas must wait in the first floor waiting room or outside the building. The Bar Association representatives of the Open Court Task Force are in the process of working with the Court to develop a subpoena form that may be obtained at the 34 South 11th Street Domestic Relations Division and a set of instructions that will enable pro se litigants to use this process to bring their witnesses into the Court.
- *Support persons* who accompany litigants to Court to provide personal assistance or child care have difficulty obtaining entry to the building and to the second floor. Support persons are important for litigants who have valid concerns about being in the courthouse with someone they fear and for those who are intimidated by participating in a judicial proceeding without a lawyer. The Court has done nothing to address the space and security limitations that it states prevent increasing access to allow support persons in.
- The *public at large*, except as self-identified observers as described above, has no access.

## **B. Information and Data Collected**

### **1. Narratives by WLP Telephone Counselors and Court Observers**

Observers reported on several occasions being denied access to courtrooms for observation without any prior individualized judicial determination of good cause. On two occasions, the court crier denied observers access to one judge's courtroom. One time, the crier told the observers that they could not learn anything in the judge's courtroom and had to go to another courtroom. The other time, the crier informed the observers that the judge would not permit them to observe. One judge adopted a policy of seeking litigant permission before admitting observers but did so without applying the constitutional good cause standard. When the litigants said they did not want to be observed, the judge denied observer admittance. In one case, the observers were asked to leave the courtroom when the children testified in open court.

Observers also reported on access problems experienced by litigants. In one case, the observer noted that a respondent told the judge he did not bring his sister as a witness because the last time the case was listed "the people downstairs" told him that third parties could not come into the courthouse.

### **2. Survey of WLP Telephone Counseling Callers**

Two of the ten callers surveyed informed us that they took other people to Court with them. One took a witness and support person and the other took a support person. Both callers wanted to take them into the courtroom. One of the callers was able to get her support person and witness into the building and waiting room but not the courtroom. The other caller was not able to gain access at all for her support person, who had to wait outside the building. Three callers did not try to take anyone with them because of difficulty getting them in on previous occasions.

### **3. Testimony From Hearings on the Unmet Needs of Victims of Domestic Violence Before the Council of the City of Philadelphia, Committees on Public Safety and Public Health and Human Services**

Attorney witnesses described the courthouse as too small to accommodate the numbers served, their support persons, and observers.<sup>35</sup> They reported that denial of access to friends and family isolates domestic violence petitioners in need of support.<sup>36</sup>

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<sup>35</sup> See *Testimony of Ourania Papademetriou, Director, Women Against Abuse Legal Center, Before the City Council's Committees on Public Safety and Health & Human Services 6 (2002)* [hereinafter *WAA Legal Testimony*].

<sup>36</sup> See *Testimony of Stephanie A. Gonzalez Ferrandez, Supervising Attorney of Family Law, Philadelphia Legal Assistance, Before the City Council's Committees on Public Safety and Health & Human Services 3 (2002)* [hereinafter *PLA Testimony*]; *WAA Legal Testimony, supra* note 35, at 6.

## **Trial Court Performance Standards**

### **Area 1: Access to Justice**

#### **1.2 Safety, Accessibility, and Convenience.**

*Standard:* Trial court facilities are safe, accessible, and convenient to use.

*Finding:* The building that houses the Domestic Relations Division of Philadelphia Family Court has inadequate security and is difficult to access and navigate.

#### **A. Background and Research**

Philadelphia Family Court is physically located in two separate buildings: the Juvenile Division is located in the original Philadelphia Family Court building at 1801 Vine Street, while the Domestic Relations Division is located in a former office building at 34 South 11th Street. This building was remade into a courthouse without adequate architectural modifications to make it suitable for courthouse functions. It is not actually entered on South 11th Street. Users reach it through an alleyway that it shares with a branch of Municipal Court. The entrance is not well marked, and users often enter the wrong courthouse.

The courthouse entryway is small and jammed with security detectors leaving little space for the throngs of people who arrive at 9 a.m., and to a lesser extent at 1 p.m., when long lists of cases are scheduled. The smoke-filled, canopy-covered alleyway is crowded with litigants lined up to enter and others who have been denied entry, often in bad weather conditions.

The interior of the building is confusing. Long hallways, which go around the entire rectangular building, house administrative, judicial, and non-judicial offices as well as courtrooms. It is easy to get lost.

The waiting rooms and other amenities such as the restrooms are often dirty and inhospitable, especially later in the day after they have been used by hundreds of people. The bathrooms, which are frequently used for smoking, despite signs prohibiting such use, are particularly appalling. These bathrooms are often havens for battered women scheduled for PFA proceedings but afraid of waiting for the hearing in the same room as the perpetrator.<sup>37</sup>

As discussed above in connection with Trial Court Standard 1.1, multiple security forces staff the courthouse at 34 South 11th Street without providing security for every

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<sup>37</sup> This information comes from conversations with women that occurred outside the scope of this data collection effort.

courtroom and waiting room. It is this absence of security that drives women into the bathrooms for safety.

The Court has acknowledged in the context of the discussions over opening the Court to the public that security is inadequate. The Court contracted with a security specialist who conducted a security audit. However, the Court has not made the audit results public.

## **B. Information and Data Collected**

### **1. Narratives by WLP Telephone Counselors and Observers**

Callers reported safety concerns in the courthouse and on the way to Court. Some reported that they were intimidated on the way to Court while others experienced the same problem in the waiting rooms or the courtrooms. One caller told us that the respondent threatened her in the courthouse by telling her that he would hurt or kill her and intimidated her into signing a custody and visitation stipulation with which she did not agree. On a more positive note, one observer reported that the judge asked the petitioner to remain after the case was dismissed and offered a sheriff escort out of the building.

### **2. Survey of WLP Telephone Counseling Callers**

Three of the ten callers surveyed believed the courthouse did not have adequate security. Five reported observing no security in the waiting room, and four reported no security in the courtroom. During the court visit, one caller reported experiencing a verbal and physical attack; another reported a verbal attack and threat. There were two additional reports of attacks and threats on the way to the courthouse: in one instance, a court security guard provided assistance; in another, no assistance was offered. Two of the ten litigants were informed of the availability of security assistance to leave the courthouse; one requested and was provided such assistance.

### **3. Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System**

Attorneys who participated in roundtable discussions reported inadequate physical facilities.<sup>38</sup> Some reported dirty halls and restrooms and no place for witnesses.<sup>39</sup> These substandard facilities detract from the dignity of the Court.<sup>40</sup>

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<sup>38</sup> PENNSYLVANIA SUPREME COURT COMMITTEE ON RACIAL AND GENDER BIAS, FINAL REPORT OF THE PENNSYLVANIA SUPREME COURT COMMITTEE ON RACIAL AND GENDER BIAS IN THE JUSTICE SYSTEM 462 (2003) [hereinafter FINAL REPORT].

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

#### **4. Testimony From Hearings on the Unmet Needs of Victims of Domestic Violence Before Council of the City of Philadelphia, Committees on Public Safety and Public Health and Human Services**

Attorneys who practice in the Court complained vehemently about the lack of safety in every part of the courthouse.<sup>41</sup> According to one practitioner, once a battered woman passes through the security entrance, she is essentially without protection.<sup>42</sup> The same attorney also testified that no more than five sheriffs appear to be assigned to the seven courtroom lobbies and eleven courtrooms.<sup>43</sup> Other parts of the courthouse that litigants frequent, such as the masters' unit, have no security.<sup>44</sup> While sheriffs are helpful when available, there are simply not enough of them.<sup>45</sup> The building at 34 South 11th Street also lacks safe facilities for parent-child supervised visitation and exchange of children for visitation.<sup>46</sup> Lack of segregated waiting rooms for petitioners and respondents also renders litigants involved in volatile matters at risk.<sup>47</sup>

#### **5. Review of Court Information and Notices**

The information sheet provided to litigants who use the Family Court nursery at 1801 Vine Street for supervised visitation explains hours of operation, rules, and suggestions for interaction with children. However, it provides no guidance to litigants who may be concerned about their safety and the safety of their children on their way to and from the courthouse. Since most, if not all, of the litigants who use the courthouse for supervised visitation are affected by domestic violence, this information is critical to their safety.

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<sup>41</sup> See, e.g., *Hearings*, *supra* note 5, at 179-82 (testimony of Stephanie Gonzalez Ferrandez, Supervising Attorney, Philadelphia Legal Assistance); *id.* at 167 (testimony of Ourania Papademetriou, Director, Women Against Abuse Legal Center); *Testimony of Stacey L. Sobel, Executive Director, The Center for Lesbian and Gay Civil Rights, Before the City Council's Committees on Public Safety and Health & Human Services* 10 (2003) [hereinafter *Center Testimony*].

<sup>42</sup> *PLA Testimony*, *supra* note 36, at 2.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 3.

<sup>45</sup> *Id.* at 2.

<sup>46</sup> *Id.* at 4.

<sup>47</sup> *Id.* at 3; *WAA Legal Testimony*, *supra* note 35, at 6.

**Trial Court Performance Standards**  
**Area 1: Access to Justice**

**1.3 Effective Participation.**

*Standard:* The trial court gives all who appear before it the opportunity to participate effectively, without undue hardship or inconvenience.

*Finding:* Insufficient information and assistance provided to pro se litigants, fragmented hearings, multiple scheduling of cases, long waits, extremely short hearings, lack of language interpreters, and inadequate child care create undue hardships and inconveniences for many litigants.

**A. Background and Research**

Based on the calls by family law litigants to our Telephone Counseling Service, the WLP has known for years that the Domestic Relations Division provides litigants with little information about how to navigate the courthouse and courtroom process. Since the vast majority of Domestic Relations Division litigants do not have lawyers, they must learn on their own how to obtain and fill out the correct forms, file papers, serve defendants, schedule hearings, and present their case on their own.

The Court provides virtually no written information or pro se assistance programs<sup>48</sup> to assist litigants in understanding the underlying law, remedies, and court processes such as how to subpoena witnesses, what documentation to provide (police reports, school records, etc.), how to comport oneself at a hearing, and what one's appeal rights are, including how to preserve a record for appeal. The bins for public information on the first floor of the courthouse are empty. This lack of information frustrates both the litigants, who do not fully understand what is going on, and the judges and other personnel, who are faced with incomplete information and inadequate and irrelevant arguments.

The new Court Information Office in City Hall contains no information on domestic relations proceedings. The Domestic Relations Division has a customer service unit, but, according to information received from callers and attorneys, it is used primarily for case status, address changes, and other troubleshooting assistance from the court computer system. The Domestic Violence Unit assists individuals in filling out petitions, but very little other personal assistance is offered for subsequent proceedings such as violations or extensions of PFAs. Advocates from small private non-profit domestic violence organizations such as Women Against Abuse Legal Center and Congreso de Latinos Unidos, which receive no funding from the Court, provide assistance to domestic violence victims on site in the courtroom waiting rooms. While

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<sup>48</sup> See Appendix E for a summary of the types of pro se assistance programs courts around the country provide.



we understand that the Intake Unit on the first floor of the courthouse assists custody and support litigants in preparing their petitions for filing, we do not know in detail the manner or amount of assistance provided.

On the eve of publication of this report, we learned that the Domestic Relations Division maintains two automated telephone assistance numbers that provide helpful information. One number provides extensive information about PFAs. The other number provides general information about the Court as well as information about support, which is out of date only as to the cost of filing for support. To our knowledge, however, the Domestic Relations Division has not publicized the existence of these telephone numbers. Since learning of the numbers from one source, we have been unable to find a single advocate or family lawyer who is aware of them.

The FJDP website has a general description of court functions but does not provide any descriptive information for pro se litigants to help them understand law and process except a link to a state website containing “Frequently Asked Questions” about support. The website also does not provide any downloadable forms. The website provides instructions on how to request accommodations under the Americans with Disabilities Act and for sign- and foreign-language interpreters. Other than for Spanish interpreters, requests for foreign-language interpreters must be made at least two weeks in advance of the scheduled event.<sup>49</sup> We know of no other source for this information.

State audits of the child support enforcement program of the Domestic Relations Division also found a lack of information provided to litigants. In reports for fiscal years ending June 30, 1999, and June 30, 1997, Pennsylvania’s Bureau of Child Support Enforcement faulted the Domestic Relations Division for failing to timely provide applicants for child support with brochures outlining the court’s available services, the individual’s rights and responsibilities, fees, and availability of legal services.<sup>50</sup>

Information about case scheduling comes from our callers, observations of proceedings, and oral information conveyed by the supervising judge. Cases are typically scheduled for a morning or afternoon list. Lists are long; forty or more PFA cases can be listed for one day.<sup>51</sup> When pre-trial proceedings have clarified that a long trial is expected, the case may be listed for a specific time. While PFA cases may be completed in one scheduling, continuances are common if one party does not appear or the judge determines that another hearing is necessary. It appears that custody proceedings are typically not completed in one scheduling, but are rescheduled repeatedly with months

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<sup>49</sup> The Philadelphia Courts, *supra* note 4.

<sup>50</sup> Bureau of Child Support Enforcement Title IV-D Program Compliance Performance Audit Report Philadelphia County Domestic Relations Division Year Ended June 30, 1999, at 1 (Oct. 30, 2000); Dep’t of Public Welfare, Bureau of Child Support Enforcement Program Compliance Section, Philadelphia County Domestic Relations Division Program Compliance Audit 28-29 (Apr. 1997).

<sup>51</sup> *Hearings*, *supra* note 5, at 35 (testimony of the Honorable Idee Fox, Supervising Judge, Domestic Relations Division).

between each scheduling. The Supreme Court’s inclusion of Philadelphia for implementation of Pennsylvania Rule of Civil Procedure 1931, providing for trial continuity and prompt decisions in family law matters, should reduce the multiplicity of hearings and delay in final resolution.<sup>52</sup>

## **B. Information and Data Collected**

### **1. Court Observation**

We examined how much information the judge provided to the litigants and how often it was provided. For this analysis, we separated PFA cases from custody cases. We asked our observers to record the degree to which judges explained the relevant process to the litigants. We did not ask observers to distinguish between petitioners and respondents for this purpose. We offered five numerical responses, ranging from 1 for “no explanation” to 5 for a “very thorough explanation.”

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<sup>52</sup> *In re* Amendments to the Rules of Civil Procedure Relating to Domestic Relations, *supra* note 17.

**a. Protection From Abuse**

We examined all PFA observations separately and segregated observations for the two judges who hear most PFA cases (Court Observation Table 3).

<b>COURT OBSERVATION TABLE 3</b>								
<b>How thoroughly did the judge explain the process to the litigants in protection from abuse cases?</b>								
<b>Degree of Explanation</b>	<b>All PFA Observations (N=199)</b>		<b>Judge A (N=80)</b>		<b>Judge B (N=78)</b>		<b>All Other PFA Judges (N=41)</b>	
	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>
<b>1 (None)</b>	<b>6.5%</b>	<b>13</b>	<b>0%</b>	<b>0</b>	<b>14.1%</b>	<b>11</b>	<b>4.9%</b>	<b>2</b>
<b>2</b>	<b>7.5%</b>	<b>15</b>	<b>0%</b>	<b>0</b>	<b>15.3%</b>	<b>12</b>	<b>7.3%</b>	<b>3</b>
<b>3</b>	<b>12.1%</b>	<b>24</b>	<b>3.7%</b>	<b>3</b>	<b>23.1%</b>	<b>18</b>	<b>7.3%</b>	<b>3</b>
<b>4</b>	<b>18.6%</b>	<b>37</b>	<b>6.3%</b>	<b>5</b>	<b>30.8%</b>	<b>24</b>	<b>19.5%</b>	<b>8</b>
<b>5 (Very Thorough)</b>	<b>55.3%</b>	<b>110</b>	<b>90.0%</b>	<b>72</b>	<b>16.7%</b>	<b>13</b>	<b>61.0%</b>	<b>25</b>
<b>Total</b>	<b>100%</b>	<b>199</b>	<b>100%</b>	<b>80</b>	<b>100%</b>	<b>78</b>	<b>100%</b>	<b>41</b>

We found that in 6.5% of the PFA cases observed (13 of 199 observations), the judges provided no explanation at all. In an additional 7.5% of PFA cases observed (15 observations), the judge provided minimal explanation. By contrast, 55.3% of the time (110 observations), the observer found the judge to offer a very thorough explanation.

Two judges handled over 80% of the PFA cases observed. We refer to them as Judge A and Judge B. When we broke down our analysis to see how the observers rated the explanations made by each of these two judges, we observed stark differences. The data showed that Judge A was observed to provide a very thorough explanation 90% of the time (72 of 80 observations) and was rated at least a 3 the remainder of the time. In sharp contrast, Judge B was found to offer no explanation 14.1% of the time (11 observations) and the least explanation (a numerical rating of 2) 15.3% of the time (12

observations). The data shows Judge B provided a very thorough explanation only 16.7% of the time (13 observations). The data with respect to all judges except Judges A and B was consistent with the data for all judges including Judges A and B, with 4.9% of the cases rated no explanation and 61% rated very thorough explanation.

**b. Custody**

In custody cases, the pattern differed somewhat from PFA cases (Court Observation Table 4).

<b>COURT OBSERVATION TABLE 4</b>		
<b>How thoroughly did the judge explain the process to litigants in custody cases? (N=72)</b>		
<b>Degree of Explanation</b>	<b>Observations</b>	
	<b>%</b>	<b>#</b>
<b>1 (None)</b>	<b>5.5%</b>	<b>4</b>
<b>2</b>	<b>15.3%</b>	<b>11</b>
<b>3</b>	<b>30.6%</b>	<b>22</b>
<b>4</b>	<b>20.8%</b>	<b>15</b>
<b>5 (Very Thorough)</b>	<b>27.8%</b>	<b>20</b>
<b>Total</b>	<b>100%</b>	<b>72</b>

Although the frequency with which observers noted that the judge provided no explanation was very similar (5.5%, or 4 of 72 observations, compared to 6.5% in PFA cases), judges were reported to provide very thorough explanations only 27.8% (20 of 72) of the time in custody cases, roughly half as often as in PFA hearings (55%).

We were unable to examine individual custody judges' explanations, due in part to incomplete data and the smaller sample of custody cases. This inability to obtain data on individual judges was also partly due to the fact that observers reported being asked to leave some judges' courtrooms; in other instances they were not permitted to take notes.

Observers consistently reported that they chose whenever possible to observe cases in courtrooms where they believed they would be well received.

Though many judges provided thorough and frequent explanations, we did not collect information about whether the explanation was relevant, and our data was insufficient to evaluate whether the litigants understood the judges' explanations.

With respect to access for the hearing impaired, one observer noted that the judge acted with extraordinary courtesy in coming down from the bench and approaching a hard-of-hearing litigant in order to explain slowly and carefully what was happening. In another case, involving a woman with a severely brain-damaged child who was unable to attend a hearing because she could not leave the child, the judge informed the litigant that she could testify by phone in the future if necessary due to the child's needs.

In one PFA case involving a non-English speaking petitioner, no translator was present in the courtroom. Instead, the respondent, an alleged batterer, translated for the victim-petitioner.

## **2. Narratives by WLP Telephone Counselors and Court Observers**

While Spanish interpreters were in the courtroom on some occasions, several observers reported problems in interpreter services. In one case, neither the petitioner nor the respondent spoke English and there was only one translator for both of them. In addition, the judge spoke too quickly for the translator and interrupted him while he was translating, preventing complete translation of the witness' testimony.

Litigants may have a long wait before their case is called. One observer sat in one judge's courtroom from 9 a.m. until 11:30 a.m. and not a single case had been called. Even if the judge commences hearing cases at 9 a.m. when litigants are scheduled for the morning list, many litigants must wait all morning until their cases are called.

## **3. Survey of WLP Telephone Counseling Callers**

With respect to court scheduling, four of the ten litigants surveyed reported that the hours and days of court operation presented problems for them, with six reporting that they had to miss work to attend court. Seven callers said it would have been helpful if the Court were open evenings and weekends.

Each person surveyed reported her case being scheduled multiple times, with two callers having their cases scheduled from three to six times, one caller scheduled six to nine times, and one more than nine times. All but one reported that their first hearings were scheduled within three months of filing, but one custody case was not scheduled for hearing for four to seven months. Of the five cases that were completed, four reported

completion within three months (one custody, three PFA) and one (custody) within seven to twelve months.

With respect to whether the case went on as scheduled, five of the ten callers surveyed said the case did not start on time, while three callers reported starting on time. Waiting times were reported as one hour or less for nine litigants and two to three hours for one litigant. Four litigants felt they had to wait longer than necessary.

With respect to courthouse child care, only four of the six callers were informed of child care in the courthouse, and only one used it. Two did not bring their children to Court, one did not use the child care because it was inadequate, one did not use it because she said a letter from the Court instructed her not to bring the child, and one did not use it because she did not know about it.

The callers were also asked a series of questions about assistance offered by the Court. Only two of the ten callers were told of any assistance the Court offered, and only one requested assistance. Only one was provided an informational brochure about court procedures.

With respect to assistance in understanding the proceeding from the judge, three callers said the judge provided such assistance; five said the judge did not.

In response to a question about what kind of assistance would be helpful, five said brochures, five said court staff to answer questions, three said explanations by the judge, two said a lawyer, one requested “a nicer judge,” and another asked for “a better attitude” from the judge.

#### **4. Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System**

Attorneys who participated in roundtable discussions indicated that the scheduling of fragmented hearings over a lengthy period of time rather than one continuous trial like other civil proceedings is costly for litigants and subjects litigants to delay and uncertainty until the issues are resolved.<sup>53</sup> If judges are rotated while the case is pending, the case is further disrupted.<sup>54</sup> They also described the long list of cases that start at 9 a.m. as “cattle call scheduling” that subjects all litigants to a lengthy and costly day in court and falls especially harshly on pro se litigants because cases with lawyers are called first.<sup>55</sup> The attorneys also reported that there are insufficient translator services for non-English speaking litigants.<sup>56</sup>

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<sup>53</sup> FINAL REPORT, *supra* note 38, at 464.

<sup>54</sup> *Id.* at 468.

<sup>55</sup> *Id.* at 469.

<sup>56</sup> *Id.* at 461.

## **5. Testimony From Hearings on the Unmet Needs of Victims of Domestic Violence Before the Council of the City of Philadelphia, Committees on Public Safety and Public Health and Human Services**

Attorneys who represent battered women in PFA proceedings commented that while the Court assisted litigants with the preparation of the initial petition for PFA, the Court provided no assistance whatsoever with petitions for modification, contempt, or extension of PFAs.<sup>57</sup> The Court does not even provide forms for litigants themselves to complete.<sup>58</sup> Several attorneys commented on refusals to accept petitions by both the Domestic Relations Division and the Emergency Filing site located in the Criminal Justice Center that handles petitions when the Domestic Relations Division is closed.<sup>59</sup> There was testimony that gay and lesbian petitioners in particular are denied protection.<sup>60</sup> An additional problem experienced by clients at the emergency filing site included denial of relief which was later granted by the Domestic Relations Division.<sup>61</sup> Attorneys also severely criticized the lack of available interpreters to help litigants file petitions and to interpret in conferences, masters hearings, and court proceedings.<sup>62</sup> One attorney described the Court telling people to come back with a friend to interpret.<sup>63</sup> The Domestic Relations Division acknowledged that it lacked written information to provide to litigants and a central set of referral information for domestic violence victims.<sup>64</sup>

## **6. Test Calls to Customer Service**

In order to evaluate the amount and quality of court assistance available by telephone, a WLP staff member made thirty-six test calls to the Court's Customer Service Unit over a period of almost three months at varying times of the day and different days of the week. The intent was to role-play a request for assistance without disclosing that the caller of the prepared realistic scenario was not genuine. Of the thirty-six calls made, not one time did the Court answer the call. Eight times the line was busy. Nine times there was no answer. Nineteen times the auto response answered the call and put the caller on hold, but no live person ever picked up the call. On those occasions, the caller was on hold for six to fifteen minutes.

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<sup>57</sup> *WAA Legal Testimony*, *supra* note 35, at 5.

<sup>58</sup> *Id.*

<sup>59</sup> *See, e.g., id.*; *Center Testimony*, *supra* note 41, at 8.

<sup>60</sup> *Center Testimony*, *supra* note 41, at 8.

<sup>61</sup> *WAA Legal Testimony*, *supra* note 35, at 5.

<sup>62</sup> *PLA Testimony*, *supra* note 36, at 5-6.

<sup>63</sup> *Id.* at 5.

<sup>64</sup> *Hearings*, *supra* note 5, at 41 (testimony of the Honorable Idee Fox, Supervising Judge, Domestic Relations Division).

## **7. Review of Court Information and Notices**

We reviewed copies of information distributed to litigants, as well as forms and notices relating to PFA and custody proceedings that we had requested from the Court.

We received nothing from the Court that provides general information about the different types of legal proceedings handled by the Domestic Relations Division and how to pursue them.

We received a number of forms, some of which clearly appear to be given to litigants; it is unclear whether all of them are provided to litigants. Our review shows them to be inadequate. Some forms are inconsistent with the relevant statute and local rules, despite regulatory requirements of “substantial” conformance.<sup>65</sup> Other forms are internally inconsistent in use of terminology and use language that is generally too complex and convoluted to be meaningful to people of low or even moderate literacy levels. Instruction sheets accompanying some of the forms do not correspond correctly with the forms. In addition, these forms provide a bare minimum of information about the applicable laws and the remedies these laws afford litigants. They also provide extremely limited, incomplete, and outdated information about community resources.

### **a. Protection From Abuse**

The Court provided us with the following sample forms, notices, and other written materials relating to PFA proceedings:

- Petition for Relief Under the Protection From Abuse Act;
- Temporary Protection From Abuse Order;
- Information sheet relating to service of PFA petitions;
- Notice of Hearing and Order for defendants in PFA cases;
- Affidavit of Service; and
- Resource Packet.

It is important to note that the local rules contain a significant number of additional forms, notices, and orders.<sup>66</sup>

The sample forms provided by the Domestic Relations Division for the most part reflect the language used in the forms in the local rules.<sup>67</sup> In two key ways, however, the Petition for Relief Under the Protection From Abuse Act and the Temporary Protection From Abuse Order depart from both the statute and the local rules:

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<sup>65</sup> PHILA. CTY. CT. R. 1902-1905.8.

<sup>66</sup> *See id.*

<sup>67</sup> *Id.* 1902.1(A)-(H).



1. The Petition for Relief Under the Protection from Abuse Act fails to identify all categories of relationships between petitioner and respondent that are covered by the Act.<sup>68</sup> Further, it contains a check-off section for the petitioner to identify on whose behalf s/he is filing the petition. This check-off list inaccurately understates the categories of petitioners provided by the statute. In a later portion of the petition, the petitioner is required to state her/his relationship to the respondent, but no guidance is provided as to what relationships are covered by the Act.
2. While the petitioner has the opportunity to note on the Protection From Abuse Petition that her/his address must be kept confidential, there is no corresponding provision on the Court's temporary protection order requiring that her address and other information be kept confidential. This omission does not conform to the Protection From Abuse Act, which prohibits the court from requiring disclosure of the address of a victim of domestic violence and her children if such disclosure would endanger them or a domestic violence program under any circumstances.<sup>69</sup> The temporary order also fails to prohibit law enforcement officers, court personnel, and any third party from disclosing the confidential address of a domestic violence program or of the plaintiff, as required by rules.<sup>70</sup>

Beyond the inadequacies of the petitions and forms, we also found the written information and instructions given to complement the petitions and forms to be inadequate.

1. For litigants seeking PFAs, the Court provides a one page information sheet about perfecting service. This sheet says that it is attached to copies of the completed protection from abuse petition and it includes information about how to be sure that the defendant gets a copy of the petition. The information sheet does not mention the temporary protection order or the notice to defend, both of which must be served on the defendant.<sup>71</sup>
2. The Court also provided us with a "Resource Packet" which includes addresses and phone numbers of the different police districts and the Special Victims Unit; the division breakdown, names, addresses, and phone numbers for the Domestic Violence Response Team detectives; a map outlining police districts; agency phone numbers and service descriptions, including the District Attorney's office,

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<sup>68</sup> 23 PA. C.S.A. § 6102 (definition of "abuse"); PHILA. CTY. CT. R. 1902.1(G).

<sup>69</sup> 23 PA. C.S.A. § 6112. The statute's directive for non-disclosure also covers information such as the plaintiff's address, telephone number, information about whereabouts, and any other demographic information and extends to law enforcement agencies, human services agencies, and school districts in which a plaintiff's child in plaintiff's custody is or has been enrolled.

<sup>70</sup> PHILA. CTY. CT. R. 1902.1(D). The rules use the terms plaintiff and defendant. We have used the terms petitioner and respondent throughout this report, as they are the terms commonly used in Philadelphia.

<sup>71</sup> 23 PA. C.S.A. § 6106(g); PHILA. CTY. CT. R. 1902.1(c), (d)(2).

3. Parole and Probation, public interest legal agencies, and social service and counseling agencies. While this information is theoretically useful, it is both incomplete and out of date.

**b. Custody**

The Court provided us with the following packets relating to custody, each containing a petition, an instruction sheet, a domestic relations information sheet, a custody information sheet, and a copy of the statutory definitions of types of custody:

- Filing for custody;
- Modifying custody; and
- Contempt.

It provided a packet relating to custody emergencies that contained the following:

- Rule to show cause;
- Instruction sheet;
- Temporary ex-parte order; and
- Affidavit/verification of service.

Relating to the role of masters in custody cases, the Court provided the following:

- Information sheet and
- Procedures for telephone hearing.

The Court also provided the following materials to the WLP:

- Custody stipulation regulation;
- Child custody mediation referral;
- Agreement for order of custody;
- Order;
- Custody, partial custody, visitation agreement;
- Request for notes of testimony and agreement for payment; and
- Information sheet on nursery as a visitation site.

With respect to custody, the form utilized by the Court for the initial custody petition is substantially in conformance with the local rule,<sup>72</sup> with one exception. The form in the local rules for a custody complaint provides, in the header below the caption, choices for the petitioner to select from to identify the purpose of the complaint.<sup>73</sup> The

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<sup>72</sup> PHILA. CTY. CT. R. 1915.15(a).

<sup>73</sup> *Id.*

choices include custody, partial custody, and visitation. The complaint used by the Court, however, does not provide any information about identifying the purpose of the complaint. The written instructions given out by the Court, which are discussed more fully below, do not address this point.

It appears from the cover sheets attached to the Court's packets on initial filings, modification, and contempt that these packets are designed to be completed independently by the petitioner and returned to the Court. Instructions are included about where to return the forms and how to pay the relevant fees. Litigants completing petitions and supporting documentation without the help of intake workers must rely heavily on the line-by-line instructions in the packets. In all three packets provided to the WLP, the instructions are poorly written and in some places incomprehensible or irrelevant to the line to which they refer. Further, the forms require petitioners to make choices regarding custody with only the barest information about the relevant law and no materials explaining the options and what they mean. Pro se litigants, as a result, are totally unprepared to ask clearly and succinctly for what they want in the framework of the law.

The Court also provided the WLP with a packet regarding emergency custody filings. The instructions for this packet are the most comprehensive of all those examined by the WLP. They are written, however, assuming a very high literacy level and a working knowledge of the relevant legal terminology. For example, petitioners are instructed to complete a rule to show cause and are told that it (and all other listed forms) must be completed correctly, but nowhere are they told what a rule to show cause is, what it accomplishes, or what they should include on it.

**Trial Court Performance Standards**  
**Area 1: Access to Justice**

**1.4 Courtesy, Responsiveness, and Respect.**

*Standard:* Judges and other trial court personnel are courteous and responsive to the public and accord respect to all with whom they come in contact.

*Finding:* While the judges and Court personnel are courteous most of the time, there appear to be serious instances of disrespectful treatment of litigants by judges and court staff.

**A. Background and Research**

This standard is of particular interest to the WLP because of the reports from numerous callers over the years indicating that they felt intimidated and mistreated by judicial and court staff. We recognize that the information collected on this issue is limited. In the absence of lawyers in the courtroom and faced with a huge volume of emotion-laden and sometimes volatile cases, we can appreciate that judges may be more abrupt and directive than in other courtrooms. In addition, we are aware that judges may be intentionally stern with some litigants and that such an approach may have a positive impact in obtaining compliance with judicial orders. However, we concluded that whatever prompts the behavior by judges that is perceived as disrespectful, such behavior conveys a lack of respect for the dignity and value of the individuals who come before the Court and has an impact on the public's confidence in the Court. It was therefore important to us to document the experience from the consumer's perspective.

**B. Information and Data Collected**

**1. Court Observation**

In our court observation, we explored how judges and litigants treated each other, as well as how court staff and litigants treated each other. The observers were instructed to rate the quality of interactions between judge and litigants and staff and litigants as respectful, neutral, or disrespectful. On a document included in this report as an attachment to Exhibits B and C, which was maintained at the WLP's office but not taken to court with observers, a non-exclusive list of examples of respectful and disrespectful treatment was provided. Examples of respectful treatment by judges included "maintained eye contact, listened carefully and was attentive to litigants/and or their attorneys, referred to parties by their names;" examples of disrespectful treatment by judges included "spoke harshly to litigants and witnesses, was not attentive and/or did not listen carefully to litigants and/or their attorneys." Examples of respectful litigant behavior included "maintained eye contact, listened carefully and were attentive" and examples of disrespectful litigant behavior included "spoke harshly to judge, did not

listen attentively to judge.” Examples for evaluating staff-litigant interactions focused on availability to answer questions and attention to answers.

The data show that the majority of the time, judges, staff, and litigants treat each other with respect, and much of the remainder of the time, they are observed to be neutral to one another. In only a small number of cases did our observers note disrespectful treatment. Because the vast majority of observations were recorded to be at least neutral and because neutral interactions between litigants and the Court are acceptable, we have merged the data for respectful and neutral into one category for this report.

We examined the PFA data and custody data separately.

**a. Protection From Abuse**

<b>COURT OBSERVATION TABLE 5</b>								
<b>How did the judges, court staff, and litigants treat each other in protection from abuse courtrooms?</b>								
<b>Degree of Respect</b>	<b>All Judges Treat Litigants (N=402)</b>		<b>All Court Staff Treat Litigants (N=203)</b>		<b>All Litigants Treat Judge (N=149)</b>		<b>All Litigants Treat Court Staff (N=147)</b>	
	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>
<b>Respectfully/ Neutrally</b>	<b>86.3%</b>	<b>347</b>	<b>98.5%</b>	<b>200</b>	<b>87.9%</b>	<b>131</b>	<b>100%</b>	<b>147</b>
<b>Disrespectfully</b>	<b>13.7%</b>	<b>55</b>	<b>1.5%</b>	<b>3</b>	<b>12.1%</b>	<b>18</b>	<b>0%</b>	<b>0</b>
<b>Total</b>	<b>100%</b>	<b>402</b>	<b>100%</b>	<b>203</b>	<b>100%</b>	<b>149</b>	<b>100%</b>	<b>147</b>

The PFA observation data showed that in the majority of all observations, judges, court staff, and litigants treated one another respectfully or neutrally (Court Observation Table 5). Specifically, judges treated litigants respectfully or neutrally 86.3% of the time (347 of 402 observations). Litigants in turn treated judges at least neutrally 87.9% of the time (131 of 149 observations). We observed only minimal disrespect directed at litigants by court staff, who were observed to treat litigants at least neutrally 98.5% of the time (200 of 203 observations). Litigants were not seen to be disrespectful of court staff at any time, though our observations were limited to courtrooms and therefore did not include the many units in which court staff and litigants interact extensively.

Closer examination of the patterns of disrespectful treatment of litigants by judges paints a more revealing picture, however. Two judges handled over 80% of the observed PFA cases. For this discussion, we identify them as Judge A and Judge B (Court Observation Table 6).

<b>COURT OBSERVATION TABLE 6</b>				
<b>How did the two primary protection from abuse judges treat litigants?</b>				
<b>Degree of Respect</b>	<b>Judge A Treats Litigant (N=170)</b>		<b>Judge B Treats Litigant (N=151)</b>	
	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>
<b>Respectfully/ Neutrally</b>	<b>97.1%</b>	<b>165</b>	<b>67.5%</b>	<b>102</b>
<b>Disrespectfully</b>	<b>2.9%</b>	<b>5</b>	<b>32.5%</b>	<b>49</b>
<b>Total</b>	<b>100%</b>	<b>170</b>	<b>100%</b>	<b>151</b>

The data show that Judge A treated litigants respectfully or neutrally significantly more often than all PFA judges combined (97.1% of the time, or 165 of 170 observations, as compared to 86.3%, or 347 of 402 observations). In sharp contrast, Judge B treated litigants respectfully or neutrally only 67.5% of the time (102 of 151 observations.) Perhaps more significantly, Judge A was found to treat litigants disrespectfully only 2.9% of the time (5 of 170 observations), as compared with Judge B, who treated litigants disrespectfully 32.5% of the time (49 of 151 observations).

**b. Custody**

<b>COURT OBSERVATION TABLE 7</b>								
<b>How did the judges, court staff, and litigants treat each other in custody courtrooms?</b>								
<b>Degree of Respect</b>	<b>All Judges Treat Litigants (N=122)</b>		<b>All Court Staff Treat Litigants (N=122)</b>		<b>All Litigants Treat Judge (N=56)</b>		<b>All Litigants Treat Court Staff (N=56)</b>	
	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>
<b>Respectfully/ Neutrally</b>	<b>95.1%</b>	<b>116</b>	<b>95.1%</b>	<b>116</b>	<b>91.1%</b>	<b>51</b>	<b>94.6%</b>	<b>53</b>
<b>Disrespectfully</b>	<b>4.9%</b>	<b>6</b>	<b>4.9%</b>	<b>6</b>	<b>8.9%</b>	<b>5</b>	<b>5.4%</b>	<b>3</b>
<b>Total</b>	<b>100%</b>	<b>122</b>	<b>100%</b>	<b>122</b>	<b>100%</b>	<b>56</b>	<b>100%</b>	<b>56</b>

The aggregate data for custody show that 95.1% of the time (116 of 122 observations) judges treated litigants with respect. The same is true for litigants' treatment of judges; 91.1% of the time (51 of 56 observations), litigants treated the judge at least neutrally. About 5% of the judge interactions with litigants (6 of 122 observations) and 8.9% of litigant interactions with judges (5 of 56 observations) were disrespectful. Similar patterns were observed for the interactions of court staff with litigants (Court Observation Table 7).

We were unable to examine treatment of litigants by individual judges in custody cases observed because of incomplete data. This problem arose for several reasons. First, a few judges did not consistently permit observers to be in their courtrooms. Second, one judge prohibited our observers from taking notes. Third, upon completion of the data collection, we discovered that our observers had been selecting courtrooms where they themselves were treated respectfully or neutrally because they were intimidated by the experiences described above. These problems arose with a very small, overlapping group of judges. As a result, judges who were rated disrespectful were avoided and the very small resulting sample size is inadequate to analyze. This suggests that our findings may underestimate the level of disrespectful treatment in some custody courtrooms.

## **2. Narratives by WLP Telephone Counselors and Court Observers**

Some narratives include descriptions by our callers of disrespectful, rude, and demeaning behavior by judges. In one PFA case, the woman-petitioner had a concussion, had just been released from the hospital, and could not understand the proceedings or answer questions. The observer stated that the judge demanded answers from her without explaining what he wanted and ordered the parties out of his courtroom in the middle of the case. He then dismissed the parties without addressing issues related to a special needs child. When he realized what he had done, he sent his staff out to the waiting room to deal with the child. The judge also ate on the bench, carried on conversations with staff about other cases after the litigants had been brought into the courtroom, interrupted the litigants frequently, and raised his voice often, at times telling the litigants, “I don’t care,” in response to their testimony.

One judge criticized the petitioners for not following through on prior PFAs. In one case, the judge complained about the petitioner “throwing out the other case.” In another, the judge said he was going to stop the repetitive filing of petitions by requiring all petitions involving these parties to be assigned to him.

In several cases, the judge yelled at the petitioner father for being a “big baby” and wasting the Court’s time. The judge told one father that he was not a man or a father and to get out of his courtroom.

## **3. Survey of WLP Telephone Counseling Callers**

Four of ten callers surveyed reported being treated respectfully by the judge; three callers said they were not. Seven of the ten reported respectful treatment by court personnel; three said they were not treated respectfully by court personnel. In response to a question about what kind of assistance would be helpful, one litigant requested “a nicer judge,” and another asked for “a better attitude” from the judge.

## **4. Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System**

Attorneys reported that low-income family law litigants are not always treated with respect by judges.<sup>74</sup>

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<sup>74</sup> FINAL REPORT, *supra* note 38, at 462.



**5. Testimony From Hearings on the Unmet Needs of Victims of Domestic Violence Before the Council of the City of Philadelphia, Committees on Public Safety and Public Health and Human Services**

Both the Court and attorneys representing litigants in the Domestic Relations Division identified the manner in which litigants must communicate with court staff in the Domestic Violence Unit as disrespectful of the privacy of litigants. The staff of the unit sit in an office and litigants must communicate with them by yelling loudly through a small hole in a glass partition separating the staff from the public within hearing range of the waiting room.<sup>75</sup> Gay and lesbian litigants face additional hardship responding under these circumstances.<sup>76</sup>

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<sup>75</sup> *Hearings*, *supra* note 5, at 48-49 (testimony of the Honorable Myrna Field, Administrative Judge, Family Court Division); *id.* at 193-94 (testimony of Stephanie Gonzalez Ferrandez, Supervising Attorney, Philadelphia Legal Assistance); *id.* at 206-07 (testimony of Stacey L. Sobel, Executive Director, the Center for Lesbian and Gay Civil Rights).

<sup>76</sup> *Center Testimony*, *supra* note 41, at 9.

## **Trial Court Performance Standards**

### **Area 1: Access to Justice**

#### **1.5 Affordable Costs of Access.**

*Standard:* The costs of access to the trial court's proceedings and records—whether measured in terms of money, time or the procedures that must be followed—are reasonable, fair and affordable.

*Finding:* Domestic relations litigation is costly in terms of fees, third party expenses, and legal representation. Current free legal services, pro bono services, and fee waiver procedures are insufficient to ameliorate the need.

#### **A. Background and Research**

We researched three main aspects of financial access to justice: court fees, third party expenses (e.g., deposition, expert witness fees), and lawyer fees. With respect to each we looked at the costs involved, the opportunities to obtain the benefits without paying the costs, and the assistance offered by the Court both in informing litigants of the availability of fee avoidance mechanisms as well as in providing direct assistance in the absence of any opportunity to obtain the service without cost.

##### **1. Filing Fees**

Filing fees vary by type of action. The filing fees that became effective November 2002 are: divorce \$219, custody \$57, support \$10, and PFA \$208.50.<sup>77</sup> A person seeking to file for divorce may obtain a waiver of filing fees upon proof of inability to pay through the filing of a Petition to Proceed In Forma Pauperis (IFP) in divorce proceedings.<sup>78</sup> In custody and support actions, a litigant may be excused from paying required filing fees by filing a similar petition, which will be granted without hearing if the applicant is a recipient of public assistance. If proof of public assistance is not presented, a Domestic Relations Division judge will review the petition pursuant to national standards for eligibility for free legal services established by the Legal Services Corporation.<sup>79</sup> By state statute, PFA petitioners may file without prepayment of fees. The statute further provides for assigning costs to the respondent and waiver of filing fees and service costs based on inability to pay.<sup>80</sup>

The IFP procedure has its shortcomings. The Domestic Relations Division has had an uneven history as far as making it available to litigants and applying the correct eligibility standards. WLP callers have reported being turned away and told to come

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<sup>77</sup> First Judicial District of Pennsylvania, 2002 Prothonotary Fee Schedule 4-7, *available at* <http://courts.phila.gov/pdf/fees2002.pdf>.

<sup>78</sup> PHILA. CTY. CT. R. 1920.62.

<sup>79</sup> PHILA. CTY. CT. REG. 93-3.

<sup>80</sup> 23 PA. C.S.A. § 6106(b), (c).

back with the fee. There is also a question as to whether litigants are properly informed of the availability of fee waivers. There are no written materials provided by the Court that include this information. Only a minority of litigants are represented by counsel, eliminating counsel as a source of information. In addition, there are litigants who do not qualify for waivers but also cannot afford court fees.

## **2. Other Costs**

There are many additional court costs involved in family law litigation. These include fees associated with genetic testing, masters fees, and other matters related to court processing, some but not all of which are covered by the waiver of filing fees. In addition, there are third-party fees for such things as expert witnesses, depositions, private home studies, custody evaluations, and other items that a party may want or need to develop to support a party's position in the litigation. There is no financial assistance available for these costs. Although the Court does not provide full custody evaluations, it does provide a lower cost alternative for home studies and mental health evaluations; a litigant can have them done by the court staff at a fee of \$200 each rather than the private custody studies that cost thousands of dollars. The cost is waivable if the litigant is unable to pay. Having a mental health evaluation done by the Court, however, rather than a private custody evaluation entails lengthy delay in that the Court has only one psychologist to perform these evaluations. In addition, the court mental health evaluation does not conform with recognized models for custody evaluations.<sup>81</sup>

## **3. Counsel Fees, Access to Free Counsel, and Pro Se Assistance**

The third and probably most critical issue is affordability of counsel and availability of low cost or free legal services. Eighty-five to ninety percent of custody, support, and domestic violence litigants are not represented by counsel.<sup>82</sup> Consequently, of the 55,468 custody, support, and domestic violence cases that the Administrative Office of Pennsylvania Courts (AOPC) reports as being disposed in 2001, it is likely that litigants in 47,148 to 49,921 of those cases were unrepresented. With at least two adult parties in each of these cases, that amounts to almost 100,000 unrepresented individuals. While we are not certain of the explanation in individual cases, we can reasonably guess that those without counsel are unable to afford counsel and that there are not sufficient pro bono resources available to provide counsel at no cost.

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<sup>81</sup> See, e.g., Ass'n of Family & Conciliation Courts, *Model Standards of Practice for Child Custody Evaluation*, available at [http://www.afccnet.org/pdfs/Child\\_Model\\_Standards.pdf](http://www.afccnet.org/pdfs/Child_Model_Standards.pdf); Am. Acad. of Child & Adolescent Psychiatry, *Practice Parameters for Child Custody Evaluations*, 36 J AM. ACAD. CHILD ADOLESC. PSYCHIATRY 57S (1997); Comm. on Prof'l Practice & Standards, American Psychological Association, *Guidelines for Child Custody Evaluations in Divorce Proceedings*, 49 AM. PSYCHOLOGIST 677 (1994).

<sup>82</sup> Grunfeld, *supra* note 2.

The cost of representation can be considerable. While lawyers' fees vary by lawyer and by the anticipated difficulty, time, and expense a case entails, lawyers generally charge a minimum average rate of \$150 per hour. An advance deposit of \$2,500 to \$3,500 may be requested. Litigants can expect to pay in the following range for representation in a domestic relations case: \$1,000 to \$25,000 for a custody case, \$2,500 to \$5,000 for a divorce, and \$1,500 to \$2,500 for a support matter. A flat fee of \$500 may be charged for representation in a PFA case if the petition has already been filed and representation involves just one court appearance.<sup>83</sup>

There are only two organizations that regularly provide free legal services for adult litigants in domestic relations cases in Philadelphia: Women Against Abuse (WAA) Legal Center and Philadelphia Legal Assistance (PLA).

WAA Legal Center has a small legal staff of only four lawyers handling a small number of PFA and custody cases; one lawyer represents litigants in PFAs, one works with clients with disabilities, another works principally on custody and support, and the fourth is the Director.<sup>84</sup> WAA Legal Center employs ten non-lawyer advocates who assist clients in both criminal and civil courtrooms.<sup>85</sup> Of the four WAA advocates assigned to the Domestic Relations Division, one is assigned to each of the two PFA courtrooms to provide information and assistance to litigants in the waiting rooms and two are assigned to the contempt courtroom two days a week.<sup>86</sup> WAA does not staff custody courtrooms or actively assist litigants in the courtroom. Despite the court rule authorizing domestic violence advocates to both *accompany* and *assist* PFA petitioners,<sup>87</sup> the Court has refused to recognize the role of the advocates in assisting their clients and has failed to make clear to the judiciary that these advocates should be permitted to stand or sit next to their clients and speak on their behalf. Advocates are relegated to observer seats when they enter the courtroom and are not permitted to communicate with their clients in the courtroom. Many have chosen to remain in the waiting room, where they can at least counsel their clients.

PLA also provides representation in custody and PFA matters. However, with a staff of only four full-time family law attorneys, PLA cannot meet the demand for representation.<sup>88</sup> The Philadelphia Bar Association's Volunteers for the Indigent Program (VIP) receives referrals from numerous organizations for possible pro bono representation from a private attorney. A small number of litigants may be represented by specialized public interest law firms such as the AIDS Law Project and the Center for Lesbian and Gay Civil Rights. While other public interest organizations such as the WLP

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<sup>83</sup> These figures are based on conversations with Philadelphia family law attorneys.

<sup>84</sup> *WAA Legal Testimony*, *supra* note 35, at 4.

<sup>85</sup> *Id.*

<sup>86</sup> Telephone Conversation with Legal Director of WAA Legal Center (March 4, 2002).

<sup>87</sup> 23 PA. C.S.A. § 6111; PHILA. CTY. CT. R. 1904.4.

<sup>88</sup> *PLA Testimony*, *supra* note 36, at 1.

provide information by telephone, they do not have the funding or staff capacity to provide individual representation.

Other alternatives do not address the need. Some unions provide free legal services to their members, often leaving the other party unrepresented.

The Philadelphia Bar Association's Chancellor's Pro Bono Task Force Report, which reports findings of a 2002 study of the pro bono need in Philadelphia, found that "the public interest community is presently unable to meet the demand for their services."<sup>89</sup> Focusing on the primary providers of free legal representation to individuals in Philadelphia, the report states:

Despite their size and expertise, . . . CLS and PLA simply cannot meet the legal needs of all those who cannot retain a lawyer, even within the areas of law in which they practice every day. . . . Many people seeking assistance are interviewed, but cannot be represented for lack of sufficient legal staff; their cases are typically then referred to Philadelphia VIP for possible referral to pro bono lawyers in private practice. . . . Cases that are referred from . . . PLA for pro bono representation are frequently simply bounced back, i.e., rejected for lack of a volunteer attorney to handle them. . . . Most members of the public interest community recognize that family law matters are the largest single area of need for pro bono service.<sup>90</sup>

This finding is consistent with the American Bar Association's 2000 report on access to legal services, which found that Legal Services Corporation funded lawyers can meet only about 20% of the civil legal needs of the poor.<sup>91</sup> At the same time, the report observed that an increasing number of family law litigants are not represented by a lawyer.<sup>92</sup>

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<sup>89</sup> PHILADELPHIA BAR ASSOC., CHANCELLOR'S PRO BONO TASK FORCE, CHANCELLOR'S PRO BONO TASK FORCE REPORT: FINDINGS AND RECOMMENDATIONS 42 (2002).

<sup>90</sup> *Id.*

<sup>91</sup> A.B.A., STANDING COMMITTEE ON RESEARCH ABOUT THE FUTURE OF THE LEGAL PROFESSION, WORKING NOTES: DELIBERATIONS OF THE COMMITTEE ON RESEARCH ABOUT THE FUTURE OF THE LEGAL PROFESSION ON THE CURRENT STATUS OF THE LEGAL PROFESSION 21 (2001), available at [http://www.abanet.org/law\\_futures/report2001/finalreport.pdf](http://www.abanet.org/law_futures/report2001/finalreport.pdf).

<sup>92</sup> *Id.* at 24.

## B. Information and Data Collected

### 1. Court Observation

Observers collected data on whether litigants had legal representation.

<b>COURT OBSERVATION TABLE 8</b>				
<b>In protection from abuse and custody cases, did either party have an attorney at the hearing?</b>				
<b>Attorney Present</b>	<b>Petitioner (N=682)</b>		<b>Respondent (N=655)</b>	
	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>
<b>No</b>	<b>79.2%</b>	<b>540</b>	<b>75.0%</b>	<b>491</b>
<b>Yes</b>	<b>20.8%</b>	<b>142</b>	<b>25.0%</b>	<b>164</b>
<b>Total</b>	<b>100%</b>	<b>682</b>	<b>100%</b>	<b>655</b>

The data shows that nearly 80% of petitioners (540 of 682 observations) and 75% of respondents (491 of 655 observations) did not have lawyers present at their hearings (Court Observation Table 8).

### 2. Narratives by WLP Telephone Counselors and Court Observers

One theme reiterated through many of the narratives was the lack of affordable and free representation. In some cases, one party had a lawyer and the other did not. The unrepresented party was put in the difficult situation of not understanding the legal system and having to decide whether to sign papers prepared by the lawyer.

Another related theme was the lack of financial resources available to callers. Their financial incapacity affected their ability to pursue their family law cases because they could not afford a lawyer. Their financial difficulties also impaired their ability to support their families, by affecting their access to housing and creating debt and credit problems, including marital debts and spousal denial of access to joint resources. They worried that their financial problems would adversely affect their custody case.

In addition, litigants were not given information about how to access affordable counsel. One court observer noted that when one litigant told the judge that she could not afford a lawyer, the judge did not provide her with information about free legal services; instead, he answered “then you can’t have one.”

### **3. Survey of WLP Telephone Counseling Callers**

Three of the ten callers surveyed reported being represented by a lawyer in their Domestic Relations Division matter. Of the seven callers surveyed who did not have representation, four reported that they could not afford counsel, and one said she could not find counsel. Three of the four who could not afford counsel were never informed about the availability of pro bono counsel.

Three callers said they incurred court fees, one paid under \$50, one paid between \$50 and \$100, and one paid over \$200. Two callers said the payment was a hardship. Two were never informed of the availability of reduced fees, and only one was so informed.

As discussed under Trial Court Performance Standard 1.3, some survey participants reported lost time from work due to frequent and lengthy court appearances. Lost time from work is also a cost to litigants.

### **4. Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System**

Attorneys commented that family law cases are costly, that there are insufficient numbers of free lawyers to meet the need, and that the Court provides insufficient information about IFP petitions.<sup>93</sup>

### **5. Review of Court Information and Notices**

The WLP did not receive any written or oral information from the Court on how to waive court costs and fees or how to file an IFP petition. The only information on waiver of fees provided to the WLP by the Court is a paragraph in its instruction sheet entitled “How to File For Emergency Relief in a Custody Case.” The information given on this sheet informs the party that she may complete an IFP petition if she cannot afford the applicable filing fees. The sheet, however, does not explain where to get an IFP petition, how to fill out a petition, or the standards for granting an IFP petition.

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<sup>93</sup> FINAL REPORT, *supra* note 38, at 464.

## Trial Court Performance Standards Area 2: Expedition and Timeliness

*A trial court should meet its responsibilities to everyone affected by its actions and activities in a timely and expeditious manner—one that does not cause delay. Unnecessary delay causes injustice and hardship. It is a primary cause of diminished public trust and confidence in the court.*<sup>94</sup>

### 2.1 Case Processing.

*Standard:* The trial court establishes and complies with recognized guidelines for timely case processing while, at the same time, keeping current with its incoming caseload.

*Finding:* Although the Domestic Relations Division has been working to reduce its backlog and move cases through the system faster, it is not current with its caseload, and data show large backlogs that have increased over time.

#### A. Background and Research

The AOPC provides a statistical breakdown of cases filed in Pennsylvania courts on a statewide as well as county by county basis. This breakdown includes the domestic relations caseload in Philadelphia. The AOPC website includes historical caseload data for Domestic Relations Division and Trial Division cases for the years 1997 through 2001, except for PFA cases for which data starts in 1999. We rely on this data to analyze the demands placed on the Domestic Relations Division relative to other divisions of the Common Pleas Court.<sup>95</sup> Tables A through D include historical caseload data for custody, PFA, support, and divorce cases in Philadelphia; Tables E through G cover all Domestic Relations Division, Civil Division, and Trial Division cases.<sup>96</sup>

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<sup>94</sup> STANDARDS IMPLEMENTATION MANUAL, *supra* note 28, at 65.

<sup>95</sup> See 2001 Caseload Statistics, *supra* note 3, at 12-13, 42-43, 56-65; Zygmunt A. Pines, Court Administrator of Pennsylvania, 2000 Caseload Statistics of the Unified Judicial System of Pennsylvania 12-13, 40-41, 50-61; 1999 Caseload Statistics of the Unified Judicial System of Pennsylvania 12-13, 40-41, 50-63; 1998 Caseload Statistics of the Unified Judicial System of Pennsylvania; 1997 Caseload Statistics of the Unified Judicial System of Pennsylvania, all available at <http://www.courts.state.pa.us/Index/Aopc/Research/indexresearch.asp#stats>.

<sup>96</sup> Although the number of cases pending at year end should be identical to the number of cases pending at the following year's start, they do not always match. The AOPC does not explain these discrepancies in its caseload data.



<b>TABLE A</b>				
<b>Custody/Visitation Caseload Statistics</b>				
<b>Year</b>	<b>Pending Year Start</b>	<b>Cases Filed</b>	<b>Cases Disposed</b>	<b>Pending Year End</b>
<b>1997</b>	1,559	7,761	6,114	3,206
<b>1998</b>	3,340	7,914	6,883	4,371
<b>1999</b>	4,371	8,032	8,107	4,296
<b>2000</b>	4,214	8,206	7,159	5,261
<b>2001</b>	5,261	9,586	7,955	6,892

<b>TABLE B</b>				
<b>Protection From Abuse Caseload Statistics</b>				
<b>Year</b>	<b>Pending Year Start</b>	<b>Cases Filed</b>	<b>Cases Disposed</b>	<b>Pending Year End</b>
<b>1999</b>	589	13,081	13,088	582
<b>2000</b>	582	13,063	12,912	733
<b>2001</b>	733	14,651	14,599	785

<b>TABLE C</b>				
<b>Support Caseload Statistics</b>				
<b>Year</b>	<b>Pending Year Start</b>	<b>Cases Filed</b>	<b>Cases Disposed</b>	<b>Pending Year End</b>
<b>1997</b>	22,493	23,080	19,622	25,951
<b>1998</b>	25,921	22,857	17,307	31,471
<b>1999</b>	----- <sup>97</sup>	27,621	14,914	108,321
<b>2000</b>	108,321	45,214	84,303	69,323
<b>2001</b>	69,250	26,700	32,914	63,036

<sup>97</sup> The AOPC website did not contain the number of cases “pending year start” for 1999.

<b>TABLE D</b>				
<b>Divorce Caseload Statistics</b>				
<b>Year</b>	<b>Pending Year Start</b>	<b>Cases Filed</b>	<b>Cases Disposed</b>	<b>Pending Year End</b>
<b>1997</b>	11,271	2,942	2,404	11,809
<b>1998</b>	11,816	2,778	2,229	12,365
<b>1999</b>	12,365	2,488	2,182	12,671
<b>2000</b>	12,671	2,362	2,190	12,843
<b>2001</b>	12,795	2,257	2,806	12,246

A review of “pending year end” data for all types of domestic relations cases shows a generally increasing backlog in all categories of cases except support. The support data shows an unusually high number of cases pending at the end of 1999 and a relatively high decrease at the end of 2000 which we cannot explain. While the support backlog remains large, it appears to be decreasing consistent with our understanding of the Court’s effort to reduce the support backlog.

The backlog raises questions about the Court’s ability to meet the demand with current resources. It also raises questions that need to be answered about why the backlog exists. Is it related, for example, to the way in which family law cases are scheduled with repeated court appearances separated by several months in between? Is it due to insufficient judicial resources?

We compared the domestic relations caseload to the caseload reported for the Trial Division, which includes civil and criminal trials (Tables E, F, and G).

<b>TABLE E</b>				
<b>All Domestic Relations Division Caseload Statistics</b>				
<b>Year</b>	<b>Pending Year Start</b>	<b>Cases Filed</b>	<b>Cases Disposed</b>	<b>Pending Year End</b>
<b>1997</b>	35,323	33,783	28,140	40,966
<b>1998</b>	41,077	33,549	26,419	48,207
<b>1999</b>	48,796	49,022	38,291	125,870
<b>2000</b>	125,671	68,845	106,564	88,069
<b>2001</b>	88,039	53,194	58,274	82,959

<b>TABLE F</b>				
<b>Civil Trial Division Caseload Statistics</b>				
<b>Year</b>	<b>Pending Year Start</b>	<b>Cases Filed<sup>98</sup></b>	<b>Cases Disposed</b>	<b>Pending Year End</b>
<b>1997</b>	20,537	24,518	25,020	16,506
<b>1998</b>	20,035	19,548	24,833	6,409
<b>1999</b>	14,459	14,023	17,283	13,064
<b>2000</b>	13,064	13,053	14,499	12,799
<b>2001</b>	29,397	39,786	34,859	32,048

<b>TABLE G</b>				
<b>Criminal Trial Division Caseload Statistics</b>				
<b>Year</b>	<b>Pending Year Start</b>	<b>Cases Filed<sup>99</sup></b>	<b>Cases Disposed</b>	<b>Pending Year End</b>
<b>1997</b>	7,148	17,353	17,660	6,841
<b>1998</b>	6,841	18,436	17,955	7,322
<b>1999</b>	7,322	17,989	17,634	7,677
<b>2000</b>	7,677	19,555	18,057	9,175
<b>2001</b>	9,175	19,531	20,202	8,504

The volume of cases in the Domestic Relations Division is much greater than the volume of cases in the civil and criminal trial divisions combined.<sup>100</sup> The backlog of the Domestic Relations Division is also much larger than the backlog of the Trial Division. The Domestic Relations Division ended 2001, the most recent year for which there is reported data, with 82,959 cases pending, whereas the Civil Trial Division had 32,048 cases pending and the Criminal Trial Division had 8,504 cases pending.

The variance in caseload and backlog between the Domestic Relations Division and the Trial Division led us to compare the number of judges assigned to each Division. Twenty-two judges are assigned to Family Court, eleven of whom are assigned to the Domestic Relations Division,<sup>101</sup> while eighty judges are assigned to the Trial Division,

<sup>98</sup> The number of Civil Trial Division “cases filed” was derived by adding together the columns in the AOPC statistical compilation labeled “new cases,” “restored cases,” and “appeals from arbitration.”

<sup>99</sup> The number of “cases filed” in the Criminal Trial Division was derived by adding together the columns in the AOPC statistical compilation labeled “new cases” and “reopened cases.”

<sup>100</sup> These figures do not include the Juvenile Division of Philadelphia Family Court which has a significant caseload.

<sup>101</sup> The Philadelphia Courts, First Judicial District of Pennsylvania, Family Division, *at* <http://courts.phila.gov/cpf.html>.

which includes both criminal and civil courts.<sup>102</sup> Although the number of cases disposed of by non-judicial officers in the Domestic Relations Division must be considered, the disparity in allocation of judicial resources merits evaluation.

A more thorough discussion of resources allocated by the FJDP among its divisions is included in the analysis accompanying Trial Court Performance Standard 4.2.

## **B. Information and Data Collected**

### **1. Survey of WLP Telephone Counseling Callers**

Each of the ten callers surveyed reported their case being scheduled multiple times, with two callers having their cases scheduled from three to six times, one caller scheduled six to nine times, and one caller more than nine times. See Trial Court Performance Standard 1.3 for further information. All but one reported the scheduling of the first hearing within three months of filing, but one custody case was not scheduled for four to seven months. Of the five cases that were completed, four were completed within three months (one custody, three PFA) and one (custody) was completed in seven to twelve months.

### **2. Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System**

Attorneys who participated in roundtable discussions indicated that the scheduling of fragmented hearings over a lengthy period of time rather than one continuous hearing is costly for litigants and subjects litigants to delay and uncertainty until the issues are resolved.<sup>103</sup>

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<sup>102</sup> The Philadelphia Courts, First Judicial District of Pennsylvania, Trial Division, at <http://courts.phila.gov/cpt.html>.

<sup>103</sup> FINAL REPORT, *supra* note 38, at 468.

**Trial Court Performance Standards**  
**Area 3: Equality, Fairness, and Integrity**

*Integrity should characterize the nature and substance of trial court procedures and decisions, and the consequences of those decisions. The decisions and actions of a trial court should adhere to the duties and obligations imposed on the court by relevant law as well as administrative rules, policies, and ethical and professional standards.*<sup>104</sup>

**3.1 Fair and Reliable Judicial Process**

*Standard:* Trial court procedures faithfully adhere to relevant laws, procedural rules, and established policies.

*Finding:* The failure to inform and afford litigants of their right to be heard, to apply crucial statutory legal standards, and to adequately publish and disseminate applicable governing procedures deprives litigants of access to justice in the Domestic Relations Division.

**A. Background and Research**

This standard implicates a number of areas related to adherence to the law. First, it poses the general question of whether the Court affords litigants general due process of law. Second, it asks whether the Court adheres to particular provisions of Pennsylvania law. Third, it evaluates the process by which the Court at the local level implements and communicates changes in procedures.

**1. Due Process of Law**

Due process of law requires reasonable notice and opportunity to be heard.<sup>105</sup> Relevant to this issue is whether the parties are informed of their right to present evidence, such as testimony, documents, and witnesses, and their right to cross examine adverse parties. Also at issue is whether the Court assists in developing a full record by asking questions of the parties.<sup>106</sup>

**2. Compliance With Codified Law and Procedure**

This standard also relates to adherence to relevant laws. The work of the court is governed by a variety of rules, ranging from formally promulgated statutes and regulations to informal, unpublished local procedures. Substantive state statutes and appellate court decisions govern decision-making in custody, support, domestic violence,

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<sup>104</sup> STANDARDS IMPLEMENTATION MANUAL, *supra* note 28, at 87.

<sup>105</sup> Goldberg v. Kelly, 397 U.S. 254 (1970).

<sup>106</sup> Moore v. Moore, 26 A.2d 163, 167 (Pa. 1993) (reaffirming the duty of the trial judge to make the fullest possible inquiry in custody actions).

and divorce. There are also statewide procedural rules that affect how the decision-making takes place. In addition, at the local level, procedural rules are periodically issued by the Administrative Judge who is appointed by the Supreme Court for a three-year term and presides over both the Juvenile and Domestic Relations Divisions.<sup>107</sup> Examples include rules regarding the granting of continuances<sup>108</sup> and rules about the local mediation program.<sup>109</sup> These are typically issued in writing, published annually in court rule books, and posted on the court's website.

The data we collected raised questions about Court compliance with the following specific laws and rules:

- The PFA statute and local Philadelphia Family Court rule permit domestic violence advocates to *accompany and assist* litigants in PFA proceedings.<sup>110</sup>
- The PFA statute requires courts to provide PFA litigants with simplified forms and clerical assistance, in English and Spanish, to help with the writing and filing of a PFA petition and written and oral referrals, in English and Spanish, to local domestic violence programs, legal services offices, and county bar associations' lawyer referral services.<sup>111</sup>
- Under the PFA statute, petitioners are eligible for PFA orders, including orders evicting the batterer and granting temporary custody rights, when abuse is established. Abuse is defined to include placing another in reasonable fear of bodily injury, false imprisonment, stalking, and actual or attempted infliction of physical or sexual abuse.<sup>112</sup>
- The court is required to adopt a means of prompt and effective service when the plaintiff avers that service cannot be safely effected by anyone other than a law enforcement officer or when the court so orders.<sup>113</sup> The PFA statute also authorizes the court to order the sheriff to effectuate service.<sup>114</sup> The form petition and order appended to the Philadelphia Family Court Rules includes a request and an order for sheriff service without prepayment of costs.<sup>115</sup>

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<sup>107</sup> There is also a President Judge of the Court of Common Pleas who is elected by the judges of the Philadelphia Common Pleas Courts, but we are unaware of what, if any, role the President Judge has with regard to procedures in Philadelphia Family Court.

<sup>108</sup> See PHILA. CTY. CT. REG. 00-04.

<sup>109</sup> See *id.* 97-2.

<sup>110</sup> 23 PA. C.S.A § 6111; PHILA. FAM. CT. R. 1904.4.

<sup>111</sup> 23 PA. C.S.A § 6106(h).

<sup>112</sup> *Id.* § 6102(a); see *Burke v. Bauman*, 2002 PA Super. 396 (finding telephone threat can be act of abuse).

<sup>113</sup> 23 PA. C.S.A § 6106(e).

<sup>114</sup> *Id.* § 6106(f).

<sup>115</sup> PHILA. CTY. CT. R. 1902.1(D), (F), (G); *id.* 1902.3(E).

- The custody statute mandates the court to consider “present and past violent or abusive conduct” when making a custody decision.<sup>116</sup>
- The custody statute requires that the court consider the preference of the child in custody cases.<sup>117</sup>

### 3. Local Court Practices

In addition to the written rules described above, the Court operates based on its own set of practices and procedures. These practices and procedures have evolved over time in many respects. They may be developed by the Family Court Administrative Judge or someone in the supervisory structure established by that Administrative Judge. The current administration has appointed a supervisory judge in charge of each division of the Family Court: one for juvenile and one for domestic relations. Previous administrations have used either non-judicial administrators or supervisory judges.

The local operating structure creates a maze-like gauntlet that a litigant must negotiate. This structure is not known to be reduced to writing except minimally on the court’s website where the multitude of personnel involved in the multi-tiered aspects of each procedure are listed.<sup>118</sup> The information on the court website includes some guidance about steps litigants are to take to process their cases, but it is sparse, incomplete, and in legalese rather than lay language. Some of the procedures are different for litigants depending on whether or not they are represented by an attorney.

In addition, there exists an assortment of unwritten procedures governing the flow of cases that are subject to frequent change. These include, for example, new procedures for scheduling cases based on how long they are expected to run and pre-trial procedures for longer cases (known as protracted and semi-protracted hearings). We know of no written format that is used to communicate these changes in procedures to the litigants and practitioners who are affected by them. We have learned about changing local procedures through the supervising judge, either through individual contact with her or through her presentations at the Family Law Section of the Philadelphia Bar Association and its dissemination of minutes. This forum seems to be the primary means of communicating these procedural changes.

The Court’s informal manner of instituting and revising local procedures reflects a good faith effort by the Court to address the needs of consumers and to respond to comments and suggestions by lawyers and advocates. The Court is working hard to move cases more expeditiously through the system, impelled in part due to a state rule

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<sup>116</sup> 23 PA. C.S.A. § 5303(1)(3).

<sup>117</sup> *Id.* § 5303(a)(1).

<sup>118</sup> The Philadelphia Courts, First Judicial District of Pennsylvania, Family Division, Domestic Relations Division, at <http://courts.phila.gov/cpfdr.html>.

that requires custody cases to be scheduled before a judge within forty-five days of the conference.<sup>119</sup> The Court deserves much credit for its responsiveness to these issues and for communicating changes to the Family Law Section on a regular basis. The absence, however, of thorough dissemination of court procedures excludes those practitioners who do not attend Family Law Section meetings and are not on the Section's electronic mailing list. It also falls particularly harshly on the large number of pro se litigants who must fend for themselves.

The lack of clarity and uniformity about court procedure is apparent from some of the questions and conversations that take place among practitioners who regularly practice at the Court. Lawyers constantly ask their colleagues what the current practice is, and debates ensue about different interpretations given by different judges regarding practices about which one would not expect debate. The uncertain and constantly changing nature of practice in the Domestic Relations Division defies written rules, confounds lawyers, cannot serve the needs of the litigants, and does not provide due process.

## **B. Information and Data Collected**

### **1. Court Observation**

We reviewed a number of data elements in our court observation database to evaluate whether the litigants were accorded due process. Our experience with callers to the WLP's Telephone Counseling Service is that they lack knowledge of how to present their case, including what to say to the court as well as what supporting evidence or witnesses might be useful. We therefore were interested in collecting data on how much time was devoted to their case in court, the types of evidence presented in support of their case, and the amount of assistance they received from the court in presenting their case.

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<sup>119</sup> PA. R.C.P. 1915.4-2(d). This rule requires cases to go before a *hearing officer* within forty-five days of a conference; however, in Philadelphia custody cases this requirement is left to *judges*.



**a. Time Spent on Case**

One data element shows how little time judges devoted to cases.

**1) All Observations**

**a) Protection From Abuse**

<b>COURT OBSERVATION TABLE 9</b>						
<b>Time spent on observed cases: protection from abuse.</b>						
<b>Time in Minutes</b>	<b>Petitioners (N=352)</b>		<b>Respondents (N=290)</b>		<b>Entire Case (N=486)</b>	
	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>
<b>0-5</b>	<b>70.7%</b>	<i>249</i>	<b>75.2%</b>	<i>218</i>	<b>51.4%</b>	<i>250</i>
<b>6-10</b>	<b>17.6%</b>	<i>62</i>	<b>14.5%</b>	<i>42</i>	<b>23.7%</b>	<i>115</i>
<b>11-15</b>	<b>6.0%</b>	<i>21</i>	<b>4.5%</b>	<i>13</i>	<b>10.9%</b>	<i>53</i>
<b>16-20</b>	<b>2.3%</b>	<i>8</i>	<b>2.0%</b>	<i>6</i>	<b>3.5%</b>	<i>17</i>
<b>21 +</b>	<b>3.4%</b>	<i>12</i>	<b>3.8%</b>	<i>11</i>	<b>10.5%</b>	<i>51</i>
<b>Total</b>	<b>100%</b>	<i>352</i>	<b>100%</b>	<i>290</i>	<b>100%</b>	<i>486</i>

More than half of the PFA cases (250 of 486 observations) were completed in five minutes or less. Seventy-five percent of all PFA cases (365 of 486 observations) were completed in ten minutes or less. Furthermore, only 10.5% (51) of PFA cases took longer than twenty minutes to complete. Similarly, in over 70% of the cases, the time spent on each of the parties was five minutes or less (70.7% of petitioners and 75.2% of respondents). Only a little over 10% of the litigants were allotted more than ten minutes of time. We observed little difference in the amount of time spent on petitioner's case as opposed to respondent's case (Court Observation Table 9).

**b) Custody**

<b>COURT OBSERVATION TABLE 10</b>						
<b>Time spent on observed cases: custody.</b>						
<b>Time in Minutes</b>	<b>Petitioners (N=152)</b>		<b>Respondents (N=123)</b>		<b>Entire Case (N=191)</b>	
	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>
<b>0-5</b>	<b>47.4%</b>	<b>72</b>	<b>47.2%</b>	<b>58</b>	<b>18.8%</b>	<b>36</b>
<b>6-10</b>	<b>22.4%</b>	<b>34</b>	<b>20.3%</b>	<b>25</b>	<b>27.7%</b>	<b>53</b>
<b>11-15</b>	<b>12.5%</b>	<b>19</b>	<b>13.8%</b>	<b>17</b>	<b>13.6%</b>	<b>26</b>
<b>16-20</b>	<b>5.3%</b>	<b>8</b>	<b>4.9%</b>	<b>6</b>	<b>9.9%</b>	<b>19</b>
<b>21+</b>	<b>12.5%</b>	<b>19</b>	<b>13.8%</b>	<b>17</b>	<b>29.9%</b>	<b>57</b>
<b>Total</b>	<b>100%</b>	<b>152</b>	<b>100%</b>	<b>123</b>	<b>100%</b>	<b>191</b>

Almost one fifth of the custody cases observed (36 of 191 observations) were completed in five minutes or less; nearly 50% of all custody cases observed (89 of 191 observations) were completed in ten minutes or less. Only 29.9% of observed custody cases (57) took longer than twenty minutes. With respect to time devoted to each of the litigants, no more than five minutes was spent on almost half of the litigants (72 of 152 petitioners and 58 of 123 respondents) (Court Observation Table 10).

**2) Procedural Hearings Versus Hearings on the Merits**

Some cases appropriately occupy less time than others, such as when there is no hearing on the merits. An example is when one party is absent and the case is continued to another date. We examined whether those cases skewed our findings regarding time spent on cases by analyzing a subset of cases in which the observer noted whether the parties were present at the hearing. We have labeled cases in which one party was absent as “procedural” because we assumed no hearing was held on the merits. The cases in which both parties were present are labeled “hearing on the merits.” We acknowledge that this labeling scheme is based on assumptions and that there are instances in which

both parties appear and a hearing is not held, such as when the parties report an agreement to the court. Since our data collection did not isolate all of the potential variables at work, we have worked with the data we were able to isolate to inform our analysis as best we could with the existing data (Court Observation Tables 11 and 12).

**a) Protection From Abuse**

<b>COURT OBSERVATION TABLE 11</b>				
<b>Time spent on procedural hearings and hearings on the merits: protection from abuse.</b>				
<b>Time in Minutes</b>	<b>Procedural (one party absent) (N=45)</b>		<b>Hearing on the Merits (both parties present) (N=119)</b>	
	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>
<b>0-5</b>	<b>68.9%</b>	<b>31</b>	<b>24.4%</b>	<b>29</b>
<b>6-10</b>	<b>24.4%</b>	<b>11</b>	<b>31.1%</b>	<b>37</b>
<b>11-15</b>	<b>4.4%</b>	<b>2</b>	<b>18.5%</b>	<b>22</b>
<b>16-20</b>	<b>2.2%</b>	<b>1</b>	<b>6.7%</b>	<b>8</b>
<b>21 +</b>	<b>0%</b>	<b>0</b>	<b>19.3%</b>	<b>23</b>
<b>Total</b>	<b>100%</b>	<b>45</b>	<b>100%</b>	<b>119</b>

Our data included a subset of 164 PFA observations in which data was recorded for both time spent and presence and absence of the parties. The judges spent five minutes or less on 68.9% (31 of 45) of the cases in which one party was identified as not present and which we therefore assumed were “procedural” hearings. We expected this outcome. However, in almost 25% of the cases in which both parties were present (37 of 119) and presumably the merits were addressed, the judges also spent five minutes or less. Over 50% of these cases were completed in ten minutes or less. The results show that an alarmingly high percentage of hearings on the merits are completed in less than ten minutes (Court Observation Table 11).

b) Custody

<b>COURT OBSERVATION TABLE 12</b>				
<b>Time spent on procedural hearings and hearings on the merits: custody.</b>				
<b>Time in Minutes</b>	<b>Procedural (one party absent) (N=24)</b>		<b>Hearing on the Merits (both parties present) (N=57)</b>	
	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>
<b>0-5</b>	<b>41.7%</b>	<b>10</b>	<b>10.5%</b>	<b>6</b>
<b>6-10</b>	<b>33.3%</b>	<b>8</b>	<b>28.1%</b>	<b>16</b>
<b>11-15</b>	<b>12.5%</b>	<b>3</b>	<b>7.0%</b>	<b>4</b>
<b>16-20</b>	<b>8.3%</b>	<b>2</b>	<b>7.0%</b>	<b>4</b>
<b>21 +</b>	<b>4.2%</b>	<b>1</b>	<b>47.4%</b>	<b>27</b>
<b>Total</b>	<b>100%</b>	<b>24</b>	<b>100%</b>	<b>57</b>

The results for custody cases also showed shorter hearings when one party was absent. While the percentage of custody cases completed in five minutes or less (10.5%) and ten minutes or less (38.6%) is a lower percentage than for PFA cases, it is still a high percentage of cases with short hearings. Custody cases can be complicated and life-altering for families and children. Sufficient time should be accorded to the determination of the best interests of the child (Court Observation Table 12).

This data raises serious questions about the Court's ability to deliver due process to families in these systems.

**b. Time Spent on Case Relative to Representation**

In order to further explore what variables might affect how much time people get in PFA and custody cases, we examined a number of other issues as they relate to time. We examined the data to determine whether the presence of a lawyer for either party affected the amount of time spent on cases. The data showed a significant relationship between the presence of counsel and the amount of time devoted to a case in both PFA and custody cases.

**1) Protection From Abuse**

<b>COURT OBSERVATION TABLE 13</b>				
<b>Was amount of time a litigant was given in a protection from abuse hearing related to whether the litigant had an attorney?</b>				
<b>Time in Minutes</b>	<b>Litigants With Attorneys (N=153)</b>		<b>Litigants Without Attorneys (N=702)</b>	
	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>
<b>0-5</b>	<b>33%</b>	<b>51</b>	<b>53%</b>	<b>372</b>
<b>6-10</b>	<b>25%</b>	<b>39</b>	<b>25%</b>	<b>174</b>
<b>11-15</b>	<b>18%</b>	<b>26</b>	<b>9%</b>	<b>64</b>
<b>16-20</b>	<b>5%</b>	<b>8</b>	<b>3%</b>	<b>22</b>
<b>21+</b>	<b>19%</b>	<b>29</b>	<b>10%</b>	<b>70</b>
<b>Total</b>	<b>100%</b>	<b>153</b>	<b>100%</b>	<b>702</b>

The PFA observation data showed that more than 53% of litigants without lawyers (372 of 702 litigants) received less than 5 minutes of court time compared to 33% of litigants with lawyers (51 of 153 litigants). Seventy-five percent of litigants without lawyers (546 of 702 litigants) received less than ten minutes devoted to their entire case, as compared to 58% of those with lawyers (90 of 153 litigants). Only 10% of those without lawyers (70 of 702 litigants) had more than twenty minutes spent on their

case, compared with 19% (29 of 153 litigants) of those with lawyers (Court Observation Table 13).

2) Custody

<b>COURT OBSERVATION TABLE 14</b>				
<b>Was amount of time a litigant was given in a custody hearing related to whether the litigant had an attorney?</b>				
<b>Time in Minutes</b>	<b>Litigants With Attorneys (N=116)</b>		<b>Litigants Without Attorneys (N=223)</b>	
	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>
<b>0-5</b>	<b>12%</b>	<b>14</b>	<b>22%</b>	<b>50</b>
<b>6-10</b>	<b>17%</b>	<b>20</b>	<b>30%</b>	<b>66</b>
<b>11-15</b>	<b>14%</b>	<b>16</b>	<b>15%</b>	<b>34</b>
<b>16-20</b>	<b>8%</b>	<b>9</b>	<b>11%</b>	<b>24</b>
<b>21+</b>	<b>49%</b>	<b>57</b>	<b>22%</b>	<b>49</b>
<b>Total</b>	<b>100%</b>	<b>116</b>	<b>100%</b>	<b>223</b>

The data showed that 22% of litigants without lawyers (50 of 223 litigants) had five minutes or less total time spent on their case, compared with 12% of litigants with lawyers (14 of 116 litigants). Slightly over 50% of all the litigants without lawyers (116 of 223 litigants) had ten minutes or less total time spent on their case, compared with 34% of those with lawyers (34 of 116 litigants). Of unrepresented litigants, 22% (49 of 223 litigants) had more than twenty minutes spent on their case, whereas 49% of those with lawyers (57 of 116 litigants) had more than twenty minutes spent on their case (Court Observation Table 14).

**c. Litigant Presentation of Evidence**

We also examined the data to determine how litigants presented their cases (Court Observation Table 15).

<b>COURT OBSERVATION TABLE 15</b>					
<b>What types of evidence did litigants seek to present?</b>					
<b>Did Litigants Express a Desire to Present:</b>		<b>Protection From Abuse</b>		<b>Custody</b>	
		<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>
<b>Own Testimony?</b>	<b>Yes</b>	<b>67.6%</b>	<b>119</b>	<b>90.1%</b>	<b>73</b>
	<b>No</b>	<b>32.4%</b>	<b>57</b>	<b>9.9%</b>	<b>8</b>
	<b>Total</b>	<b>100%</b>	<b>176</b>	<b>100%</b>	<b>81</b>
<b>Witnesses?</b>	<b>Yes</b>	<b>13.7%</b>	<b>57</b>	<b>30.8%</b>	<b>52</b>
	<b>No</b>	<b>86.3%</b>	<b>360</b>	<b>69.2%</b>	<b>117</b>
	<b>Total</b>	<b>100%</b>	<b>417</b>	<b>100%</b>	<b>169</b>
<b>Expert Witnesses?</b>	<b>Yes</b>	<b>1.5%</b>	<b>3</b>	<b>3.1%</b>	<b>4</b>
	<b>No</b>	<b>98.5%</b>	<b>202</b>	<b>96.9%</b>	<b>126</b>
	<b>Total</b>	<b>100%</b>	<b>205</b>	<b>100%</b>	<b>130</b>
<b>Documents as Evidence?</b>	<b>Yes</b>	<b>9.8%</b>	<b>39</b>	<b>31.7%</b>	<b>51</b>
	<b>No</b>	<b>90.2%</b>	<b>359</b>	<b>68.3%</b>	<b>110</b>
	<b>Total</b>	<b>100%</b>	<b>398</b>	<b>100%</b>	<b>161</b>

The data collected includes litigant requests to present four types of evidence: their own testimony, witnesses, expert witnesses, and documentation. We also asked observers to record whether these requests were granted, but, due to the small sub-sample size and incomplete data, we were unable to determine whether or not the litigants were successful in this respect. However, the data is clear that, although litigants consistently

offered their own testimony, they rarely utilized other options for making their cases before the judge such as presenting witnesses, expert witnesses, and documentary evidence.

**d. Litigant Challenges to Evidence**

To further elucidate the litigants’ efforts to advocate for themselves, we also examined questions that related to litigants’ ability to refute their opponents’ cases (Court Observation Table 16). We focused on whether litigants cross-examined their opponents or their opponents’ witnesses and on whether litigants objected informally to their opponents’ evidence. An objection was labeled “formal” if an attorney was present and “informal” if no attorney was present.

<b>COURT OBSERVATION TABLE 16</b>					
<b>Did litigants try to challenge evidence presented by opponents?</b>					
<b>Did Party:</b>		<b>Protection From Abuse</b>		<b>Custody</b>	
		<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>
<b>Cross-Examine Opponent or Witnesses?</b>	<b>Yes</b>	<b>8.7%</b>	<b>37</b>	<b>20.0%</b>	<b>62</b>
	<b>No</b>	<b>91.3%</b>	<b>390</b>	<b>80.0%</b>	<b>248</b>
	<b>Total</b>	<b>100%</b>	<b>427</b>	<b>100%</b>	<b>310</b>
<b>Informally Object to Opponent’s Evidence?</b>	<b>Yes</b>	<b>10.8%</b>	<b>45</b>	<b>16.1%</b>	<b>28</b>
	<b>No</b>	<b>89.2%</b>	<b>373</b>	<b>83.9%</b>	<b>146</b>
	<b>Total</b>	<b>100%</b>	<b>418</b>	<b>100%</b>	<b>174</b>

The data shows that in both PFA and custody cases, petitioners and respondents alike did not cross-examine their opponents and opponents’ witnesses. Similarly, litigants did not object to or protest their opponents’ evidence.

**e. Judicial Development of Record**

In addition to explaining the process to the litigants, a judge sometimes asks questions of the parties in order to elicit information from them that will enable the judge to make a more informed decision.



<b>COURT OBSERVATION TABLE 17</b>					
<b>Did the judge ask questions of the parties?</b>					
<b>Litigant</b>		<b>Protection From Abuse</b>		<b>Custody</b>	
		<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>
<b>Petitioner</b>	<b>Yes</b>	<b>79.3%</b>	<b>333</b>	<b>90.5%</b>	<b>143</b>
	<b>No</b>	<b>20.7%</b>	<b>87</b>	<b>9.5%</b>	<b>15</b>
	<b>Total</b>	<b>100%</b>	<b>420</b>	<b>100%</b>	<b>158</b>
<b>Respondent</b>	<b>Yes</b>	<b>73.1%</b>	<b>250</b>	<b>86.4%</b>	<b>108</b>
	<b>No</b>	<b>26.9%</b>	<b>92</b>	<b>13.6%</b>	<b>17</b>
	<b>Total</b>	<b>100%</b>	<b>342</b>	<b>100%</b>	<b>125</b>

We asked our observers to record simply whether or not they observed the judge asking questions. We found that nearly 80% of all petitioners in PFA cases were asked questions by the judge (333 of 420 petitioners). The percentage was nearly as high for respondents, nearly three-quarters of whom were asked questions (250 of 342 respondents). In custody cases, the percentages were even higher (over 90% of petitioners, or 143 of 158, and over 86% of respondents, or 108 of 125) (Court Observation Table 17).

This data demonstrates that the judges take their responsibility for developing the record seriously.

**f. Judicial Development of Record and Representation**

We examined the data to determine whether the presence of an attorney made it more or less likely that the judge would ask questions of a party.

<b>COURT OBSERVATION TABLE 18</b>				
<b>Was there a relationship between whether the petitioner had counsel and whether the judge asked questions in custody hearings?</b>				
	<b>Attorney Present (N=50)</b>		<b>No Attorney (N=101)</b>	
	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>
<b>Judge Asked Questions</b>	<b>80%</b>	<b>40</b>	<b>95%</b>	<b>96</b>
<b>Judge Did Not Ask Questions</b>	<b>20%</b>	<b>10</b>	<b>5%</b>	<b>5</b>
<b>Total</b>	<b>100%</b>	<b>50</b>	<b>100%</b>	<b>101</b>

The data shows that custody petitioners with lawyers were significantly less likely to be asked questions by the judge (Court Observation Table 18). For custody respondents and PFA parties, there was no relationship between whether the judge asked questions and the presence of counsel.

**g. Allegations of Domestic Violence in Custody Cases**

Our data also shows that allegations of domestic violence were made in only 23.4% of custody cases (32 of 137 observations). While we do not know whether domestic violence was involved in any of the other 176 cases, research suggests that the incidence of domestic violence among people involved in custody disputes could be much higher than shown by our data.<sup>120</sup> The absence of any mention of domestic

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<sup>120</sup> Researchers have concluded that there is compelling evidence that spousal abuse is present in at least one-half of custody and visitation disputes referred to family court mediation programs. Some programs estimate that domestic violence occurs in almost 80% of cases; no program put the incidence at less than 50%. Jessica Pearson, *Mediating When Domestic Violence Is a Factor: Policies and Practices in Court-Based Divorce Mediation Programs*, 14 *MEDIATION Q.* 319, 320, 324 (1997). Since cases involving domestic violence are inappropriate for and may not be referred to mediation, the proportion of custody cases involving domestic violence may be even higher.

violence during the hearings may be caused by litigants' lack of knowledge of its relevance. The Court's failure to disseminate any information to litigants advising them that domestic violence is a consideration in custody cases contributes to this ignorance. In addition, as described in the summary of narratives in this section, some judges refuse to accept evidence of domestic violence in custody cases. Our telephone callers tell us they have heard how judges refuse to hear about domestic violence in custody cases and therefore believe it would be futile to try to raise it. The Court should take steps to insure that litigants are aware that domestic violence is an issue that is appropriately raised in a custody case and that judges understand their obligation to consider domestic violence in custody cases.

#### **h. Testimony by Children**

We also explored whether children testified in custody cases. Out of 187 observations, children testified in only 13% of the cases (24 observations). Children did not testify 87% of the time (163 observations). Although we are lacking sufficient information about the children and circumstances to answer the question fully, this data raises questions about whether the mandate to consider the child's preference is being followed.

#### **i. Continuing Case Without Issuing Order**

In nine of the PFA hearings that WLP volunteers observed, the judge continued the case "to see what would happen" without issuing an order. In each of these cases there was testimony of either threats or stalking.

#### **j. Service of Process**

Although observers were not asked to record information about service of process, observers noted that in thirty-one of the PFA cases, service of process was reported to be difficult for the petitioner to accomplish. Since the PFA statute authorizes the court to order the sheriff to make service without prepayment of costs, it is important to explore why litigants are having trouble effectuating service.

### **2. Narratives by WLP Telephone Counselors and Court Observers**

Many narratives recount judges' refusals to consider domestic violence as a relevant factor in a custody determination. One caller reported that the judge refused to let her testify about domestic violence in her custody proceeding, even though she believed it was relevant to the custody decision and whether visitation should be supervised. Another caller reported that the judge refused to permit her to introduce testimony and police records of domestic violence calls. During one observation, the judge refused to hear about child abuse in a custody case and rejected the mother's request for supervised visitation, even though there was Department of Human Services

involvement and an offer of medical records. In another observation, the judge told the petitioner that custody and PFA were unrelated and that “judges are not allowed to grant custody as part of a PFA if the child is not abused.” Some callers reported that they were ordered into joint counseling despite a history of domestic violence.

One judge “advised” a petitioner who had requested that the respondent be evicted to take an agreement that day and to move away. Saying he only wanted to hear about physical abuse, the judge refused to consider the petitioner’s allegations that a PFA respondent kicked her out of the house and ripped the phone off the wall when she tried to call 911. Several observations included notations that the judge informed the parties that abuse only includes physical abuse or threats of physical abuse and refused to hear or consider other conduct. One judge delivered this definition of abuse and stated that he was “trying to make this thing go away.”

One judge issued “no contact” orders but refused to order evictions in abuse proceedings, asserting that physical bruising did not constitute sufficient evidence of physical abuse. This judge characterized these cases as “one push one shove” or “two push” cases without any punches or kicks, insinuating that the type of abuse at issue did not merit eviction. In another case, the judge criticized a petitioner in a PFA case for not coming to court for ten years and informed her that her failure to do so constituted evidence that she was not really scared.

There are instances in which the judge made comments in front of the respondent that suggested that PFA orders are worthless. In one instance, the judge admonished a frightened petitioner for seeking a bench warrant and convinced her that it was not in her interest to pursue the PFA and that she should live with stalking as long as she was not being assaulted. In another case, the judge told the petitioner that if he kicked the respondent out of the house, he could not ensure that he would stay out and that the court “can only give her a piece of paper, and then it’s only a matter of how quickly she can get to a phone.”

Callers are unsure of what to expect in court or what is involved in a custody or PFA proceeding. In one case, the caller reported that the judge berated a petitioner for not being aware that she could bring witnesses to the hearing.

In another PFA case, the respondent was given notice of his right to come to court to review the case file in advance of the hearing, but the petitioner was not. The observer noted that the judge treated the petitioner as irresponsible for not having reviewed the file despite lack of notice. In addition, as a result of not receiving notice, the petitioner was also unaware that the temporary order evicted the respondent from her apartment.

### **3. Survey of WLP Telephone Counseling Callers**

Seven of the nine litigants who answered this question reported not being given the opportunity to present all the evidence that they wanted to present. Six litigants told us that they wanted to present evidence but were not given the opportunity to present any evidence at all. Two litigants who said they had not been permitted to present all the evidence they wanted to present were permitted to present some evidence—both presented their own testimony and one presented a witness. None of the surveyed litigants were given the opportunity to question their opponent. Only two litigants presented all that they wanted to present; one presented her own testimony and a witness, and the other presented her own testimony and documents. Our survey did not obtain information about the circumstances surrounding the litigants’ desire to present evidence and whether they succeeded in doing so.

Survey respondents reported that the hearings lasted from zero to twenty-one or more minutes, some lasting under five minutes and half ranging from six to fifteen minutes.

### **4. Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System**

Attorneys who participated in roundtable discussions commented that some judges wrongly refuse to allow testimony on domestic violence in custody cases, one judge describing an attempt to do so as a “slick point.”<sup>121</sup> They also observed that judges misapply the law by holding mothers to higher standards, such as basing custody decisions on economics.<sup>122</sup> One attorney reported that one litigant was told that if she did not have enough money to pay the filing fee, she could not afford to have custody.<sup>123</sup> They also recounted judges pressuring litigants to settle their cases.<sup>124</sup>

### **5. Testimony From Hearings on the Unmet Needs of Victims of Domestic Violence Before the Council of the City of Philadelphia, Committees on Public Safety and Public Health and Human Services**

Testimony was presented that lesbian and gay petitioners are not issued PFA orders despite a legal basis for the issuance of such an order.<sup>125</sup>

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<sup>121</sup> FINAL REPORT, *supra* note 38, at 475.

<sup>122</sup> *Id.* at 474.

<sup>123</sup> *Id.* at 475-76.

<sup>124</sup> *Id.* at 476.

<sup>125</sup> *Center Testimony*, *supra* note 41, at 8-9.

**Trial Court Performance Standards**  
**Area 3: Equality, Fairness, and Integrity**

**3.3 Court Decisions and Actions.**

- Standard:* Trial courts give individual attention to cases, deciding them without undue disparity among like cases and upon legally relevant factors.
- Finding:* The lack of certainty, orderliness, and regularity in proceedings in the Domestic Relations Division relative to other legal proceedings, coupled with the prevalence of women, racial minorities, and low income people among the litigants suggest bias may be a factor contributing to the inadequacies in the Domestic Relations Division.

**A. Background and Research**

Numerous studies have been conducted examining gender and racial bias in the judicial system.<sup>126</sup> Most, if not all, specifically look at the administration of family law matters with an understanding that gender bias may affect how family matters are handled, both systemically and in individual cases.<sup>127</sup>

Pennsylvania- and Philadelphia-specific data on gender of parties is not available since the AOPC does not collect data by gender. The data collected by the WLP in the court observation project showed that 73% of petitioners in the PFA and custody proceedings observed were female.

The prevalence of women as petitioners in family law matters raises questions about whether the low prestige of and insufficient resources given to the Domestic Relations Division are the result of gender bias. Commercial matters in the civil court system receive far more time and attention than matters heard in the Domestic Relations Division. While scheduling problems and waiting occur in many court matters, there is significantly more certainty, orderliness, and regularity in proceedings in the Civil Division of the Common Pleas Court than in the Domestic Relations Division. For example, civil trials, once started, proceed on successive days to completion with opportunities for all witnesses to testify. As described throughout this report, proceedings in the Domestic Relations Division are characterized by many brief hearings held over lengthy periods of time.

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<sup>126</sup> See ROSEN & ETLIN, *supra* note 14, at 141-43 (describing the establishment of gender bias task forces across the United States and the conclusions reached by reports of these task forces).

<sup>127</sup> See, e.g., OHIO JOINT TASK FORCE ON GENDER FAIRNESS, A FINAL REPORT 71-82 (1995) (examining gender fairness in domestic relations matters); GENDER BIAS TASK FORCE OF TEXAS, FINAL REPORT 45-78 (1994) (describing the impact of bias in cases involving divorce, division of property, visitation, child support, and domestic violence).

In addition, gender bias studies have shown that cultural stereotypes about women's roles in marriage and society may distort the court's application of substantive law and subject women to condescension, indifference, and hostility.<sup>128</sup> The problems identified throughout this report appear to reflect gender bias in this way.

The AOPC also does not collect data on race and ethnicity of litigants. However, close to 60% of the litigants observed by the WLP were African-American. The WLP Telephone Counseling Service hears complaints from litigants of all racial and ethnic backgrounds about their inability to afford legal representation and the brevity of their court proceedings. Census data demonstrates a link between race and poverty.<sup>129</sup>

While judicial attitudes toward lesbian and gay litigants have not been subject to extensive study, information reported herein suggests that bias may sometimes affect the handling of these cases.

## **B. Information and Data Collected**

### **1. Court Observation**

Overall, the data show that a very high percentage of cases are given extremely short hearings. Our court observation data gave us an opportunity to evaluate whether any particular group disproportionately experiences short hearings (Court Observation Table 19).

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<sup>128</sup> ROSEN & ETLIN, *supra* note 14, at 141-43.

<sup>129</sup> See U.S. Census Bureau, Census 2000 Summary File 3: Area 1 Profile (Oct. 25, 2002) (prepared by Pennsylvania State Data Center for the WLP). These figures are not broken down by family size.

<b>COURT OBSERVATION TABLE 19</b>						
<b>Was the amount of time spent on a custody case related to petitioner's race?</b>						
<b>Time in Minutes</b>	<b>Caucasian (N=108)</b>		<b>African-American (N=185)</b>		<b>Total Litigants<sup>130</sup> (N=293)</b>	
	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>
<b>0-10</b>	<b>29.6%</b>	<b>32</b>	<b>48.6%</b>	<b>90</b>	<b>41.6%</b>	<b>122</b>
<b>11-20</b>	<b>22.2%</b>	<b>24</b>	<b>23.8%</b>	<b>44</b>	<b>23.2%</b>	<b>68</b>
<b>21+</b>	<b>48.2%</b>	<b>52</b>	<b>27.6%</b>	<b>51</b>	<b>35.2%</b>	<b>103</b>
<b>Total</b>	<b>100%</b>	<b>108</b>	<b>100%</b>	<b>185</b>	<b>100%</b>	<b>293</b>

The data showed a relationship between the race of the petitioner in custody cases and how much time was spent on those cases. This sub-sample of observations showed that nearly half of all African-American petitioners (90 of 185 litigants) had ten minutes or less devoted to their cases, as compared with 29.6% of Caucasian petitioners (32 of 108 litigants). It also showed that more than twenty minutes of time per case was devoted to 27.6% of African-American litigants (51 of 185), as compared with 48.2% of Caucasian litigants (52 of 108).

Unlike the data for petitioners, the data regarding respondents did not show a relationship between race and how much time was spent on custody cases. Nor did we observe any connection between the race of either party and the amount of time spent on PFA cases.

Having found that whether litigants have lawyers is significantly related to how long their hearings last and further having learned that there is, at least in custody cases, a significant relationship between the petitioner's race and the length of the hearing, we explored whether litigants' race corresponds with the likelihood of having counsel (Court Observation Table 20).

<sup>130</sup> Observers also identified Asian and Hispanic litigants, but the numbers observed were insufficient to analyze whether time spent was related to ethnicity.



<b>COURT OBSERVATION TABLE 20</b>				
<b>Was there a relationship between race of petitioner and whether petitioner had counsel in protection from abuse cases?</b>				
<b>Was Counsel:</b>	<b>Caucasian (N=109)</b>		<b>African-American (N=273)</b>	
	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>
<b>Present?</b>	<b>29.4%</b>	<b>32</b>	<b>8.8%</b>	<b>24</b>
<b>Absent?</b>	<b>70.6%</b>	<b>77</b>	<b>91.2%</b>	<b>249</b>
<b>TOTAL</b>	<b>100%</b>	<b>109</b>	<b>100%</b>	<b>273</b>

The data showed that African-American petitioners in PFA cases were significantly less likely to have lawyers than were Caucasian petitioners. Of African-American petitioners, 91.2% had no lawyer present (249 of 273 litigants), compared with 70.6% of Caucasian petitioners who were unrepresented (77 of 109 litigants). Due to small sample size and data collection problems, the data does not show whether such a relationship exists for respondents. Neither does it show any such relationship with either petitioners or respondents in custody cases.

Ideally, we would like to have gathered information on litigants' socioeconomic status to learn whether lack of income contributed to the fact that so many litigants were unrepresented. The form of our observations did not lend itself to gathering this type of data. Other research may yield more information about the relationships among economics, race, representation, and court time devoted to the case. Racial disparities in representation might be explained, in part, by the disproportionate poverty of certain minority communities. According to the 2000 Poverty Guidelines, an individual earning \$11,250 annually was living at 125% of the poverty level.<sup>131</sup> As of 2000, approximately 20% of African Americans living in Pennsylvania earned \$10,000 per year or less, compared with only 8% of Caucasians.<sup>132</sup> Race and socioeconomic status may therefore combine in ways that make it more likely that minorities will encounter substantially more obstacles in gaining access to the justice system. The impact of race and economics on access to representation and court time should be closely examined, and steps should be taken to ameliorate any disparities confirmed.

<sup>131</sup> Annual Update of the HHS Poverty Guidelines, 65 Fed. Reg. 7555-57 (Feb. 15, 2000).

<sup>132</sup> See U.S. Census Bureau, *supra* note 129.

## **2. Testimony From Hearings on the Unmet Needs of Victims of Domestic Violence Before the Council of the City of Philadelphia, Committees on Public Safety and Public Health and Human Services**

Advocates testified that lesbian and gay petitioners are treated less favorably than heterosexual litigants with regard to PFAs.<sup>133</sup> One advocate reported that the masters at the emergency filing site often do not issue PFA orders to gay and lesbian petitioners but instead refer them to the private criminal complaint process.<sup>134</sup> Because the parties are the same sex, there is an increased likelihood that mutual orders are issued against both parties.<sup>135</sup> In addition, at the Domestic Violence Unit at 34 South 11th Street, the physical setup of the office requires litigants to yell through a hole in a glass partition separating them from court staff, thereby sharing very private information with all who are in the waiting room, a particularly uncomfortable situation for lesbian and gay litigants.<sup>136</sup>

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<sup>133</sup> *Center Testimony, supra* note 41, at 10-11.

<sup>134</sup> *Id.* at 8.

<sup>135</sup> *Id.* at 10-11.

<sup>136</sup> *Id.* at 8-9.

**Trial Court Performance Standards**  
**Area 3: Equality, Fairness, and Integrity**

**3.4 Clarity.**

*Standard:* The trial court renders decisions that unambiguously address the issues presented to it and clearly indicate how compliance can be achieved.

*Finding:* Limited data suggests that improving the clarity of custody orders will improve a petitioner's ability to enforce a custody order.

**A. Background and Research**

Over the years, the WLP has heard repeatedly from callers regarding difficulty obtaining police enforcement of custody orders. Although the police have clear authority to intervene when a custody order is violated,<sup>137</sup> it is in part the lack of clarity of the custody order itself that prevents such intervention. The only other remedy available when custody orders are violated is for the petitioner to file a contempt petition with the court, a process that could take a lengthy period of time to resolve.

**B. Information and Data Collected**

**1. Narratives by WLP Telephone Counselors and Court Observers**

Several callers reported that the police refuse to enforce custody orders. In one case, the police said the custody order was not specific enough.

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<sup>137</sup> 18 PA. C.S.A. § 2904.

**Trial Court Performance Standards**  
**Area 3: Equality, Fairness, and Integrity**

**3.5 Responsibility for Enforcement.**

*Standard:* The trial court takes appropriate responsibility for enforcement of its orders.

*Finding:* Information suggests the need for expedited judicial enforcement procedures.

**A. Background and Research**

Related to Trial Court Performance Standard 3.4, when a litigant must turn to the Court for enforcement of a custody order, it takes too long to obtain enforcement. In the case of a custody order, a non-custodial parent may keep the child in violation of the order for months. Emergency custody orders are granted only in the extreme case of immediate danger.

**B. Information and Data Collected**

**1. Narratives by WLP Telephone Counselors and Court Observers**

Callers complained that they were unable to get before the Court promptly to obtain an expedited decision when the other parent violated a custody order. While awaiting court enforcement of the custody order, they must continue to comply or face contempt charges themselves.

**2. Testimony From Hearings on the Unmet Needs of Victims of Domestic Violence Before the Council of the City of Philadelphia, Committees on Public Safety and Public Health and Human Services**

Testimony revealed a number of areas involving enforcement problems. One witness expressed concern for enforcement of orders requiring confiscation of weapons since only one sheriff was assigned this responsibility.<sup>138</sup> Some judges refer batterers to anger management classes but there is no follow-up to insure that they attend.<sup>139</sup> Inadequate coordination with police also hinders the court's enforcement of orders.<sup>140</sup>

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<sup>138</sup> WAA Legal Testimony, *supra* note 35, at 5.

<sup>139</sup> PLA Testimony, *supra* note 36, at 8.

<sup>140</sup> WAA Legal Testimony, *supra* note 35, at 6.

**Trial Court Performance Standards**  
**Area 4: Independence and Accountability**

*Effective court management requires sufficient resources to do justice and to keep costs affordable. . . . Resource allocation to cases, categories of cases, and case processing are at the heart of trial court management. Assignment of judges and allocation of other resources must be responsive to established case processing goals and priorities, implemented effectively, and evaluated continuously.*<sup>141</sup>

**4.2 Accountability for Public Resources.**

*Standard:* The trial court responsibly seeks, uses, and accounts for its public resources.

*Finding:* The FJDP fails to seek and allocate sufficient funding, personnel, and other resources for the Domestic Relations Division to improve access to justice in essential ways such as: (1) upgrading the physical structure; (2) increasing security; (3) developing materials and deploying staff to provide litigants with meaningful information and assistance; and (4) increasing personnel to expedite case processing and afford litigants a full and fair opportunity to present their cases. Nor does the FJDP make public any meaningful accounting of its use of resources.

**A. Background and Research**

To determine whether the Domestic Relations Division is supplied with adequate funding and other resources, we set out to obtain and analyze documentation of sources and levels of funding, allocation of personnel, and size of caseloads. This task proved to be extremely difficult. Public information about funding, allocation of resources, and locus of decision-making relating to these issues is very limited and not easily accessible. However, through a persistent and tedious search of public records, we collected enough budget, personnel, and caseload information to provide an accurate picture of the resources allocated to the Domestic Relations Division.

The funding of the Philadelphia courts has a long and complicated history. All local court systems in Pennsylvania, including Philadelphia, were historically funded by the counties. In 1987, the Pennsylvania Supreme Court directed the state to assume responsibility for funding all local courts based on the 1967 amendment of the state constitution creating the unified judicial system.<sup>142</sup> After inaction by the General Assembly and the filing in 1992 of a second legal action, the Supreme Court issued an

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<sup>141</sup> STANDARDS IMPLEMENTATION MANUAL, *supra* note 28, at 160.

<sup>142</sup> County of Allegheny v. Commonwealth of Pennsylvania, 534 A.2d 760 (Pa. 1987); PA. CONST. art. 5, §1.

order in 1996 requiring the General Assembly to enact a funding scheme for the entire court system.<sup>143</sup> The court also appointed former Supreme Court Justice Frank Montemuro, Jr. as Special Master;<sup>144</sup> he subsequently recommended a staged transition from county to state funding.<sup>145</sup>

Little progress has been made on this transition. Currently, only salaries of judges and the court administrator are paid directly by the state. The remaining funds come from county budgets. These funds are augmented by federal and state grants for specific programs. For Philadelphia, the county funding is allocated by Philadelphia City Council.

In the midst of litigation over state funding, Philadelphia experienced a fiscal crisis in 1991 that contributed to its inability to fund the Philadelphia court system and led to the takeover of the Philadelphia courts by the Pennsylvania Supreme Court.<sup>146</sup> During the four-year period in which the Supreme Court controlled the Philadelphia court system, it entered into a zero-growth zero-reduction funding arrangement with the city of Philadelphia,<sup>147</sup> established the FJDP, and eliminated approximately 500 staff positions.<sup>148</sup> According to correspondence between the city administration and court administration, under the zero-growth agreement the FJDP is given a lump-sum budget amount and determines how to allocate and apportion funding to all of its functions and responsibilities.<sup>149</sup> Unlike other city departments, which must return any unspent funds to the general fund, the FJDP is permitted to retain any savings it achieves and spend them in any way it chooses.<sup>150</sup> This agreement formally ended in 1997, but has continued on an informal basis since then.<sup>151</sup>

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<sup>143</sup> Pa. State Ass'n of County Comm'rs v. Commonwealth of Pennsylvania, 681 A.2d 699 (Pa. 1996).

<sup>144</sup> *Id.* at 703.

<sup>145</sup> Frank J. Montemuro, Jr., Interim Report of the Master on the Transition to State Funding of the Unified Judicial System 17 (July 26, 1996). Justice Montemuro noted in his report the negative impact of fragmented financial systems and disparities in staffing, caseloads, and programs of county courts on equal access to justice for all Pennsylvanians. *Id.* at 8. He also emphasized that the transition to state funding was not necessary just for economy but also to protect the court system from chronic underfunding. *Id.* at 10.

<sup>146</sup> City of Philadelphia Five Year Financial Plan Fiscal Year 2000-Fiscal Year 2004, at 199 (January 1999) [hereinafter Five Year Financial Plan].

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* at 198 (noting that the FJDP was directly controlled by the Pennsylvania Supreme Court until 1996); *First Judicial District Testimony FY2004*, *supra* note 3, at App. A (Dec. 3, 2002) (First Judicial District Position Levels: FY1990-FY2003 Year-to-Date).

<sup>149</sup> See Memorandum from David L. Cohen, Chief of Staff, to Geoff Gallas, Exec. Administrator - FJDP 2 (May 17, 1995) [hereinafter Cohen Memorandum] (on file with the WLP).

<sup>150</sup> *Id.* at 4.

<sup>151</sup> *Id.* at 7 (noting end of six year zero-growth agreement in FY1997); *First Judicial District Testimony FY2003*, *supra* note 9, at 1 n.1; *First Judicial District Testimony FY2004*, *supra* note 3, at 1 n.1.

In testimony to City Council during appropriations hearings for FY2003, the FJDP provided a description of this agreement by quoting from Philadelphia's Five-Year Financial Plan for FY2002 to FY2006:

*“[T]he FJDP retains all savings that it achieves in the amount appropriated by the City. These surpluses are transferred at the end of each fiscal year to the Administrative Office of Pennsylvania Courts (AOPC), purportedly for the exclusive use by the FJDP for technology and training. FJDP and AOPC are not, however, required to advise the City on the actual use of these surpluses, which between FY93 and FY01 amounted to over \$36 million, and in FY01 represented 7.1 percent of fiscal-year obligations. Moreover, these surpluses have been growing, as the FJDP has sent more than \$21 million to the AOPC in just the last three years.”*<sup>152</sup>

Despite the implication in the above quote from the FJDP's budget submission that use of the surplus is limited by the zero-budget agreement to technology and training, correspondence between the city and the FJDP makes clear that how the funds are used is completely at the discretion of the FJDP.<sup>153</sup>

It is not clear what other government or judicial bodies, if any, participated in decision-making about the FJDP surplus or participate generally in decisions relating to the FJDP budget. The AOPC, which was created in 1969 and has supervisory, administrative and long-range planning duties for all county court systems, includes among those duties “managing fiscal affairs, including budget preparation, disbursements approval, and goods and services procurement.”<sup>154</sup> In addition, FJDP operations are controlled by an Administrative Governing Board which consists of the President Judges of the Court of Common Pleas, Municipal Court and Traffic Court, the Administrative Judges of the Court of Common Pleas and Municipal Court, and the Administrator of the Pennsylvania Courts.<sup>155</sup>

The FJDP's submission to City Council for FY2003 showed that over \$29 million had been encumbered for technical projects. The remaining account balance left in the Court Improvement Account, the FJDP's surplus fund, as of December 31, 2001, was \$7,249,839. The anticipated surplus for FY2003 was \$7,591,696.<sup>156</sup>

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<sup>152</sup> *First Judicial District Testimony FY2003*, *supra* note 9, at 1 n.1 (quoting City of Philadelphia, Five Year Financial Plan for FY2002 to FY2006, at 200) (emphasis in original).

<sup>153</sup> See Cohen Memorandum, *supra* note 149, at 8.

<sup>154</sup> Administrative Office of Pennsylvania Courts, Introduction to AOPC, available at <http://www.courts.state.pa.us/Index/Aopc/intro.asp> (last visited 3/18/03).

<sup>155</sup> The Philadelphia Courts, First Judicial District of Pennsylvania, at <http://courts.phila.gov/about.html>.

<sup>156</sup> See *First Judicial District Testimony FY2003*, *supra* note 9, at Attachment B (attached to this report as Appendix E).

There is no publicly available documentation describing how the savings placed in the surplus fund are achieved or why the technology needs to which they are being committed must be met outside of the annual budget. Without any further information, this steady and increasingly high surplus suggests that the budget is drawn up each year with the intention of “saving” funds. It also raises questions about what other needs could or should be funded by the court’s annual budget or surplus fund.<sup>157</sup>

As this report was going to press, the FJDP testified at City Council in support of its FY2003-2004 budget.<sup>158</sup> In its testimony, the FJDP provided information regarding negotiations for settlement of a mandamus action.<sup>159</sup> The FJDP brought this legal action in August 2002, seeking to force the city to provide an additional \$4 million to the court’s budget for FY2002-2003.<sup>160</sup> The FJDP testified that the budget it presented incorporates certain agreements reached in those settlement negotiations, including the need to achieve a budget reduction of \$6.2 million.<sup>161</sup>

At the FY2003-2004 City Council hearings, the FJDP was questioned about the surplus funds in the Court Improvement Account. In response, the FJDP stated that the city had taken it away in mandamus settlement negotiations.<sup>162</sup> It further testified that the surplus balance is now less than zero, given its encumbrance for two existing projects.<sup>163</sup> Because settlement negotiations are taking place, the FJDP did not provide City Council with any further information.

## 1. FJDP Budget Allocations

To arrive at a picture of the FJDP’s allocation to the Domestic Relations Division, we undertook a multi-step process, starting with the FJDP budget in its entirety. Each year, Philadelphia City Council approves a budget for the FJDP. Funding for the FJDP is distributed to the three courts that make up the Philadelphia County Court System: the Court of Common Pleas, Municipal Court, and Traffic Court, as well as to the Court Administrator. Our analysis of funding is drawn from the FJDP budget for FY2002-2003, which Philadelphia City Council approved in the amount of \$110,072,433.<sup>164</sup>

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<sup>157</sup> For example, the FJDP has requested additional funding from the city administration. The city has responded that the FJDP’s annual lump-sum budget would cover these costs, but for its decision to “save” funds for the surplus. Cohen Memorandum, *supra* note 149.

<sup>158</sup> See *First Judicial District Testimony FY2004*, *supra* note 3, at 2 (referring to *First Judicial Dist. of Pa v. Street*, 575 MD 2002 (Pa. Commw. Ct. filed Aug. 21, 2002)).

<sup>159</sup> *Id.*

<sup>160</sup> *First Judicial Dist. of Pa v. Street*, 575 MD 2002 (Pa. Commw. Ct. filed Aug. 21, 2002). It should be noted that City Council is a defendant in this lawsuit.

<sup>161</sup> *First Judicial District Testimony FY2004*, *supra* note 3, at 2.

<sup>162</sup> *FY '04 FJDP Operating Budget Testimony*, *supra* note 13, at 1991-92 (testimony of Honorable Massiah Jackson, President Judge, Court of Common Pleas).

<sup>163</sup> *Id.* at 1993 (testimony of Joseph A. Cairone, Court Administrator, FJDP).

<sup>164</sup> City of Philadelphia Office of the Director of Finance, FY03 City Appropriated FJD Budget (2002) (provided to the WLP by City of Philadelphia Office of the Director of Finance). This amount is offset by court revenues paid back to the City, which the FJDP estimated in the amount of \$57,193,000 for FY2003,



We focus our analysis on the budget of the Common Pleas Court, which is organized into three divisions based on case types. Family Court is one of these divisions and encompasses the Domestic Relations Division and Juvenile Division. The other two are the Trial Division, which includes the Criminal and Civil Divisions, and the Orphans Division, which handles matters involving estates, wills, and property of minors and incapacitated persons.

The FJDP budget includes funding from the city and from federal and state grants. City funds are identified as “General Fund”; funds from federal and state grants are identified as “Grant Funds.” The funding allocated to the Common Pleas Court from the General Fund for FY2002-2003 was \$76,987,548.<sup>165</sup>

The FJDP allocates funding among the separate parts of the Court of Common Pleas. Within the Court of Common Pleas, our analysis focuses on Family Court and the Trial Division because the work and caseload of Orphans Court is so very different from the work of the Family Division and the Trial Division. Table H shows how much funding is actually from city funds (General Fund) and how much is from federal and state grants (Grant Funds).<sup>166</sup>

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approximately 50% of the entire FJDP budget. *First Judicial District Testimony FY2003*, *supra* note 9, at 1 n.2 & App. C.

<sup>165</sup> See FY03 City Appropriated FJD Budget By Division, *supra* note 164.

<sup>166</sup> *Id.*

<b>TABLE H</b>		
<b>First Judicial District of Pennsylvania Court of Common Pleas Budget FY2002-2003</b>		
	<b>Family Court Division (Domestic Relations &amp; Juvenile)</b>	<b>Trial Division (Criminal and Civil)</b>
<b>General Fund Schedule 100 Staff Expenditures</b>	\$19,471,803	\$34,653,252
<b>General Fund Class 200, 300, &amp; 400 Non-Staff Expenditures</b>	\$926,399	\$2,107,822
<b>Sub-total General Fund</b>	<b>\$20,398,202</b>	<b>\$36,761,074</b>
<b>Grant Funds</b>	\$31,571,355	\$3,265,435
<b>Total General and Grant Funds</b>	<b>\$51,969,557</b>	<b>\$40,026,509</b>

The FJDP allocated General Funds totaling \$20,398,202 to the Family Division and \$36,761,074 in General Funds to the Trial Division. The Family Division received Grant Funds totaling \$31,571,355; the Trial Division received \$3,265,435 in Grant Funds (Table H).

Our next step was to break down the Family Court budget between its two divisions, Domestic Relations and Juvenile, to arrive at the budget for the Domestic Relations Division.

<b>TABLE I</b>			
<b>First Judicial District of Pennsylvania Family Court Budget Allocation FY2002-2003</b>			
	<b>General Fund</b>	<b>Grant Funds</b>	<b>Total</b>
<b>Domestic Relations Division</b>	\$4,400,550	\$27,015,454	\$31,416,004
<b>Juvenile Division</b>	\$15,997,652	\$4,555,901	\$20,553,553
<b>Total</b>	\$20,398,202	\$31,571,355	\$51,969,557

We derived separate budgets for the two divisions of Family Court by careful analysis of the FJDP’s Operating Budget for FY2003<sup>167</sup> (Table I). For Grant Funds, this process was straightforward. According to the Operating Budget, the Domestic Relations Division was projected to receive \$27,015,454 in federal and state funds restricted to child support enforcement. The balance of Grant Funds projected for Family Court, \$4,555,901, was for the Juvenile Division.

Given that the Grant Funds for the Domestic Relations Division are restricted to child support,<sup>168</sup> we made an assumption that the balance of Domestic Relations Division funding—the amount allocated to the Domestic Relations Division from the General Fund—is utilized for the entire PFA, custody, and divorce caseload. To determine this amount, we needed to break down General Fund allocations between the Juvenile and Domestic Relations Divisions.

Since the budget itself is not reported by division and does not identify all expenditures by division, we had to calculate the numbers ourselves.

Starting with the Family Court General Fund budget of \$20,398,202, we removed those items which we knew were not Domestic Relations budget items; these included staff positions marked “Adoptions” and “Medical Branch” as well as identified Juvenile Division staff positions. These items totaled \$13,219,899.

<sup>167</sup> See Operating Budget FY2003, *supra* note 8.

<sup>168</sup> 42 U.S.C. §§ 651-669a.

We then segregated the forty-three staff positions which the budget identified as Domestic Relations Division positions and set aside the budgeted amount for these positions, **\$1,622,799**, for later inclusion in our total for the Domestic Relations Division.

This process left \$5,555,504 to divide between Juvenile and Domestic Relations. Budget documents reflect funds in the amount of \$4,629,105 for 128 Family Court staff positions not designated for budget purposes to either division. These positions are administrative in nature or relate to support services for judges. As both the Juvenile and the Domestic Relations Divisions have eleven assigned judges, we chose to divide this amount of money in half, yielding an estimated **\$2,314,552** for sixty-four positions in the Domestic Relations Division.

This calculation left \$926,399 for non-staff expenditures. As the non-staff expenditures are similarly not broken down by division, we divided the total non-staff expenditures evenly, amounting to **\$463,199** for the Domestic Relations Division.

From these figures, we added together the total staff and non-staff budget allocations and calculated the total amount of general fund support to the Domestic Relations Division as **\$4,400,550**. By our calculations, this amount funds in its entirety the functioning of the Domestic Relations Division with respect to PFA, custody, and divorce cases by a non-judicial staff of 107. This amount contrasts with \$27,015,454 in Grant Funds for support enforcement with a staff of 441.

## **2. Personnel**

Next we turned to the allocation of personnel within the Family Division (Table J). While the Supreme Court pays the salaries of judges, assignments are made by the FJDP. We derived the figures for judicial staff by examining the number of judges listed for each division in the Philadelphia Legal Directory for 2002. Non-judicial staff numbers and source of funding were taken from the FY2002-2003 budget submitted to City Council by the FJDP.

<b>TABLE J</b>				
<b>First Judicial District of Pennsylvania 2003 Allocation of Staff: Family Court and Trial Division</b>				
	<b>Judicial Staff (State Fund)</b>	<b>Non-Judicial Staff (City Budget General Fund)</b>	<b>Non-Judicial Staff (City Budget Grant Funds)</b>	<b>Total Staff</b>
<b>Domestic Relations</b>	11	107	441(support)	559
<b>Juvenile</b>	11	388	70	469
<b>Total Staff Family Court</b>	22	495	511	1,028
<b>Total Staff Trial Division</b>	80	918	16	1,014

Only twenty-two judges are assigned to the entirety of the Family Court Division; eleven of them are assigned to the Domestic Relations Division.<sup>169</sup> By comparison, eighty judges are assigned to the Trial Division.<sup>170</sup>

Inequities appear in the allocation of non-judicial personnel as well. While the city of Philadelphia funds 918 non-judicial staff persons for the Trial Division, it pays for only 107 non-judicial staff persons for the Domestic Relations Division. These 107 staff persons are responsible for all of the custody, divorce, and PFA functions of the court.

### **3. Resources Relative to Caseload**

After determining the level of financial and personnel support provided to the Domestic Relations Division, we examined the relative amount of work supported by those resources to determine whether the Domestic Relations Division received a fair allocation. We used caseload statistics as a measure of work (Table K).<sup>171</sup>

<sup>169</sup> The Philadelphia Courts, First Judicial District of Pennsylvania, Family Division, at <http://courts.phila.gov/cpf.html>.

<sup>170</sup> This includes twenty-eight commissioned judges and ten senior judges assigned to the Civil Trial Division and thirty-eight commissioned judges and four senior judges assigned to the Criminal Trial Division. The Philadelphia Courts, First Judicial District of Pennsylvania, Court of Common Pleas, Trial Division, at <http://courts.phila.gov/cpt.html>.

<sup>171</sup> 2001 Caseload Statistics, *supra* note 3, at 57-65, 67, 69, 71, 79.

<b>TABLE K</b>			
<b>First Judicial District of Pennsylvania</b>			
<b>2001 Caseload Statistics: Family Court and Trial Division</b>			
<b>Total Caseload</b>	<b>Cases Filed</b>	<b>Cases Disposed</b>	<b>Cases Pending Year End</b>
<b>Custody, Divorce, PFA Support</b>	<b>26,494</b>	<b>25,360</b>	<b>19,923</b>
<b>Support</b>	26,700	32,914	63,036
<b>Domestic Relations Total</b>	<b>53,194</b>	<b>58,274</b>	<b>82,959</b>
<b>Juvenile Total</b>	13,600	15,609	12,365
<b>Family Court Total</b>	<b>66,794</b>	<b>73,883</b>	<b>95,324</b>
<b>Trial Division Total (Civil and Criminal)</b>	<b>59,317</b>	<b>55,061</b>	<b>40,552</b>

More cases are filed in and disposed of by the Family Court than the Trial Division on an annual basis. At the end of 2001, more than twice as many cases were pending in the Family Court Division (95,324) than in the Trial Division (40,552). The same was true of the Domestic Relations Division alone, which ended 2001 with 82,959 cases pending, whereas the criminal and civil trial divisions combined ended with 40,552 cases pending. These comparisons are true from a historical perspective as well.<sup>172</sup>

We have separated out the custody, divorce, and PFA caseloads from the support caseload to highlight the high number of cases supported by a relatively small number of city dollars. Only \$4.4 million in city funding supports the handling of the custody, divorce, and PFA caseloads. Twenty-seven million dollars in federal funding, which represents over five times the amount of money and more than four times the number of personnel dedicated to custody, divorce, and PFA cases, funds the court's handling of support cases. As demonstrated by the backlog in support cases, which has grown from almost 26,000 in 1997 to 63,000 in 2001,<sup>173</sup> even these resources are not enough to handle the support cases, which are less complex than custody, divorce, and PFA cases.

#### **4. Conclusions**

The bottom line is that the FJDP allocates only \$4.4 million to support the Domestic Relations Division's work each year processing over 26,000 new custody, PFA, and divorce filings and disposing of over 24,000 such cases with a non-judicial staff of only 107 and a judicial staff of only eleven. Standing alone, these statistics are

<sup>172</sup> See Tables A through G under analysis at Trial Court Performance Standard 2.1, *supra*.

<sup>173</sup> See Table C under analysis at Trial Court Performance Standard 2.1, *supra*.

shocking. When compared to the funding and personnel allocated to support cases and the smaller caseload in the Trial Division, they raise serious doubts about the Court's capacity to mete out justice to the families so desperately in need of intervention.

While the Domestic Relations Division struggles to handle an overwhelming caseload with insufficient resources, the FJDP has been saving \$7 million a year, purportedly for technology and capital improvements, when some or all of that money could have been redirected to the needs of the Domestic Relations Division. The FJDP has allocated no funding for improvements in the Domestic Relations Division. The Domestic Relations Division's wishlist is lengthy, including the updating of ten-year-old computer systems, additional staff, audiovisual technology, printed materials for consumers explaining their rights, and improved access to culturally competent services for victims of domestic violence.<sup>174</sup> The FJDP's responses to inquiries from City Council about whether its FY2004 budget provided for improved security, increased personnel, and other improvements to the Domestic Relations Division demonstrates a continuing disregard for the needs of this Division.<sup>175</sup>

Moreover, with the full knowledge that limited access to courtrooms is unconstitutional and in the face of a Philadelphia Bar Association Resolution calling for the opening of the Domestic Relations Division to the public,<sup>176</sup> not only has no funding been allocated for facility renovations and improved security, but a lease was signed in 2001 renewing the space for five years at this entirely inadequate location for a court. As "state of the art" courtrooms with handcrafted Italian tiles have been constructed in City Hall with \$5.25 million in FJDP funds,<sup>177</sup> there is little doubt that the needs of the Domestic Relations Division have been unconscionably neglected to the detriment of families and children.

As this report goes to press, it appears that the days of "saving" and "surpluses" are over. In its testimony presented to City Council in support of its 2004 budget, the FJDP stated that the budget it presented incorporates certain agreements reached in settlement negotiations of a lawsuit it filed against the city.<sup>178</sup> As reported by the FJDP, these negotiations have resulted in the elimination of the surplus.<sup>179</sup>

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<sup>174</sup> *Hearings, supra* note 5, at 48-53 (testimony of the Honorable Myrna Field, Administrative Judge, Family Court Division).

<sup>175</sup> *FY '04 FJDP Operating Budget Testimony, supra* note 13, at 1988-89, 1993-98.

<sup>176</sup> See analysis under Trial Court Standard 1.1, *supra*, for a fuller discussion of the closed court.

<sup>177</sup> Caryn Tamber, *Space Race Ends: Common Pleas Civil Division Gets New Courtrooms*, LEGAL INTELLIGENCER, Apr. 10, 2003, at 1 (describing opening of four of the five planned courtrooms, three of which are being used for complex litigation cases, and new offices for the complex litigation center).

<sup>178</sup> *First Judicial District Testimony FY2004, supra* note 3, at 2.

<sup>179</sup> *FY '04 FJDP Operating Budget Testimony, supra* note 13, at 1991-92 (testimony of Honorable Massiah-Jackson, President Judge, Philadelphia Court of Common Pleas); *id.* at 1993 (testimony of Joseph A. Cairone, Court Administrator, FJDP).

**Trial Court Performance Standards**  
**Area 4: Independence and Accountability**

**4.4 Public Education.**

*Standard:* The trial court informs the community about its programs.

*Finding:* The Domestic Relations Division of Family Court is engaged in no public education.

See discussion under Trial Court Performance Standard 1.3, *supra*, for background and information about the Court's lack of public information.



**Trial Court Performance Standards**  
**Area 5: Public Trust and Confidence**

*Compliance with law depends, to some degree, on public respect for the court. Ideally, public trust and confidence in trial courts should stem directly from the direct experience of citizens with the courts.*<sup>180</sup>

**5.1 Accessibility.**

**5.2 Expeditious, Fair, and Reliable Court Functions.**

*Standard:* The public perceives the trial court and the justice it delivers as accessible. The public has trust and confidence that basic trial court functions are conducted expeditiously and fairly and that court decisions have integrity.

*Finding:* Some litigants fear they will not be treated justly or obtain just results in Domestic Relations Division proceedings.

**A. Background and Research**

Over the years, the WLP has received calls from individuals who have had bad experiences in the Domestic Relations Division or who have heard from friends or relatives that they will not be treated fairly in this Court. Some have had to represent themselves with little help or information from the Court and were intimidated and confused by the proceedings. Recognizing that individuals who did not get the result they want are likely to blame the judicial system and that the WLP may disproportionately hear about such cases, there nevertheless exists a perception that fair proceedings are not the norm.

**B. Information and Data Collected**

**1. Narratives by WLP Telephone Counselors and Court Observers**

Callers to the WLP's Telephone Counseling Service have reported a reluctance to take their family law matters to court because they feel they are never heard by the judge. They feel that judges do not care about kids. Some express concern about spousal relatives on court staff or their spouse's attorney winning based on a relationship with the judge, rather than the merits of the case.

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<sup>180</sup> STANDARDS IMPLEMENTATION MANUAL, *supra* note 28, at 192.

## **2. Survey of WLP Telephone Counseling Callers**

Four of ten callers surveyed reported accomplishing their goal in Court, and six reported not succeeding. When asked if they were treated fairly by the judge, five said yes, and two said no. With respect to treatment by court personnel, six said they were treated fairly, and four said they were not.

#### IV. Report Conclusions

Based on the research and information we collected, we have concluded that the Domestic Relations Division's performance falls far short of the standards set by the Commission on Trial Court Performance Standards. The most startling finding we established is that the FJDP grossly underfunds the Domestic Relations Division.<sup>181</sup> This fact is so central to the operation of the Court that it significantly undermines the Court's ability to perform to standard in the other areas of performance. In fact, given the dedicated administration of the Domestic Relations Division and their clear goals to improve the functioning of the Court as juxtaposed to what we found, we cannot help but conclude that the Court will never be able to achieve its goal if maintained at its current woefully inadequate level of economic support and personnel.

Summarizing our findings under the rubric of the five areas of court performance analyzed, we found:

- **Justice is elusive for many litigants in the Domestic Relations Division of Philadelphia Family Court.** While the door has been cracked open, unlike domestic relations proceedings throughout the Commonwealth, domestic relations proceedings in Philadelphia are for the most part behind closed doors with little to no public access. Denying public access is blatantly unconstitutional. This closed structure deprives litigants of the accompaniment of support persons, as well as the benefit of public accountability and education that results from public scrutiny. The facility is too small to accommodate the litigants and the public, difficult to navigate, and unsafe. It is also dirty and unkempt by mid-day. Unrepresented litigants are not provided with sufficient information and assistance to understand the proceedings or their rights and are subjected to lengthy waits. Hearings are brief and often incomplete, requiring multiple return visits over many months for the same matter. Non-English speaking litigants are not afforded language access. Out of thirty-six test calls made by the WLP to the Domestic Relations Division's Customer Service Unit for telephone assistance, not one time did the Court even answer the telephone. While most court personnel are courteous and respectful, there are serious instances of disrespectful treatment. The costs of legal representation and litigation and lack of information about fee waivers and pro bono resources leave most litigants without the resources needed to present their cases effectively.
- **In spite of efforts to improve timeliness of case processing, serious backlogs remain.** Insufficient resources and personnel have not allowed the Domestic Relations Division to eliminate significant backlogs despite its best efforts. Except for support, the backlogs are increasing. These backlogs generate delays

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<sup>181</sup> There may be a threshold question as to whether the FJDP is adequately funded. The WLP does not have the tools or capacity to answer this question and has not attempted to do so.

that cause injustice and hardship for families in distress and unnecessarily leave families in limbo and sometimes in danger.

- **Equality, fairness, and integrity are undermined by the lack of assistance, due process, and time provided to litigants and the rendering of decisions that are inconsistent with applicable legal standards and difficult to enforce.** The prevalence of women as petitioners in family law matters raises questions about whether gender bias contributes to the Court's low prestige and insufficient resources. In addition, gender bias studies have shown that cultural stereotypes about women's roles in marriage and society may distort the court's application of substantive law and subject women to condescension, indifference, and hostility.<sup>182</sup> Information collected indicates that applicable legal standards are not always observed, particularly in the consideration of abuse in custody proceedings, leaving families at risk.

Litigants are not accorded due process in many respects. Lacking representation, litigants rarely present tangible evidence or witnesses or object to the introduction of the opponent's evidence. The Court provides them with no information about their rights to do so and little time to present their case. Hearings are brief: 75% of PFA cases and nearly 50% of custody cases are completed in less than ten minutes. Continuously changing procedures (created with good intentions to improve timely processing of cases) that are not adequately disseminated leave litigants in the dark about how to move through the process and prove their case. Once they leave the courthouse, litigants face daunting challenges enforcing court orders.

- **Failure to provide the Court with sufficient resources renders it incapable of properly serving the numbers of parents and children who must turn to it for safety and stability in their family life.** The FJDP fails to allocate sufficient and equitable funding to the Domestic Relations Division, particularly in light of the \$36 million surplus that accumulated from 1992 to 2002. This misallocation results in severe under-funding of custody, divorce, and PFA cases and raises serious questions about the ability of the Domestic Relations Division to mete out justice to the families so desperately in need of intervention. The FJDP also fails to be accountable to the public by not making budget information accessible to the public and not informing the community about its services.
- **Barriers to access, fairness, and resources lead to lack of confidence and trust in the Court.** The problems identified throughout this report in its entirety undermine the public's and the litigants' confidence in this Court.

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<sup>182</sup> ROSEN & ETLIN, *supra* note 14, at 141-142.

In essence, we found that there is a crisis in the Domestic Relations Division that has been largely invisible. Words are inadequate to convey the experiences of those who come in contact with this Court: of judges facing long lists of serious cases each day, rarely with lawyers available to present the facts and offer argument or witnesses; of fearful women huddled in bathrooms awaiting hearings on their PFAs while the alleged abuser sits in the waiting room; of parents seeking custody of their children and not knowing the difference between legal custody and physical custody; and of family members or friends waiting in the alleyway entrance because they were not allowed in the building or courtroom to provide support. **A court in crisis cannot serve families in crisis.**

## **V. Report Recommendations**

This report highlights many areas in which improvement is needed to assure access to justice and compliance with the Trial Court Performance Standards. We have formulated several concrete recommendations that the Court can implement in the short term. We also recommend a process for long term solutions. A comprehensive strategy is needed so that solving one problem does not create another problem.

### **Funding**

- Improve funding to the Domestic Relations Division to address the critical issues identified in this report.
- Reform current budgeting practices to eliminate surpluses when basic needs are unfunded and to improve allocation of resources to address more equitably the needs of all litigants.
- Develop and make public information about allocation of funds, resources, and personnel within the Philadelphia Family Court system by division.
- Provide a public accounting on the source and use of the “Court Improvement Account Fund” (surplus), detailing expenditures to date and current and projected balances.
- Provide information to the public explaining why the “Court Improvement Account Fund” has not been available to fund the basic needs of the Domestic Relations Division.

### **Public Access**

- Fulfill the constitutional mandate of open court by addressing the barriers to public access inherent in the courthouse in its current location. In the short term, the 34 South 11th Street courthouse should be renovated. In the long term, the operations of the Domestic Relations Division should be relocated to a more appropriate facility.

### **Security**

- Increase the security staff so that every courtroom, waiting area, hallway, and area used by the public and litigants has security personnel.
- Institute and publicize safety options for litigants, including escort service and staggered leaving times.
- Construct separate waiting rooms for opposing parties.
- Make security audits of the courthouse public.

## **Equality, Fairness, and Respect**

- Provide education and guidance to judicial and non-judicial staff to improve treatment of litigants, application of appropriate legal standards, and understanding of domestic violence.
- Provide appropriate and adequate interpreter services for non-English-speaking and hearing-impaired litigants.
- Reconstruct the Domestic Violence Unit so that litigants no longer are required to loudly communicate intimate personal information to court staff through the hole in the glass partition between the court staff and the public.

## **Pro Se Information and Assistance Programs**

- Publish and disseminate information for pro se litigants to help them negotiate the family law process by themselves, including information about the laws, court procedures, and litigant rights and responsibilities, presented in a way that they can understand, including in different languages and forms.
- Study programs for assisting pro se litigants that are in effect in other jurisdictions around the country, select those that would work best in Philadelphia, develop a funding plan, and implement such programs.<sup>183</sup>

## **Pro Bono Representation**

- Work with the Philadelphia Bar Association to increase the pool of attorneys available to provide pro bono representation in domestic relations cases.

## **Personnel**

- Assign more judicial and non-judicial staff to the Domestic Relations Division to expedite case processing and afford litigants a full and fair opportunity to present their cases.

## **Scheduling**

- Improve scheduling of cases to reduce fragmentation, multiplicity, and shortness of hearings. The inclusion of Philadelphia, by order of the Pennsylvania Supreme Court dated December 17, 2002, in the implementation of Pennsylvania Rule of Civil Procedure 1931, providing for trial continuity and prompt decisions in family law matters, has the potential to ameliorate scheduling problems.<sup>184</sup> The

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<sup>183</sup> See Appendix E for a summary of the types of pro se assistance programs courts around the country provide.

<sup>184</sup> *In re* Amendments to the Rules of Civil Procedure Relating to Domestic Relations, *supra* note 17.

FJDP should enthusiastically support the implementation, evaluation, and integration of the pilot program with necessary resources.

### **Continuous Self-Monitoring**

- The Domestic Relations Division of Philadelphia Family Court should engage in continuous self-monitoring by using the criteria established by the Trial Court Performance Standards, in cooperation with the community of persons who use the Court—lawyers, court personnel, and litigants.

### **Public Accountability and Responsiveness**

- The Court, the public interest legal community, and the Philadelphia Bar Association must come together to develop a long term strategy that engages key stakeholders in the community at large and assures that families in crisis do not find themselves dealing with a court in crisis.



# **APPENDICES**

## **Methodologies for Research and Documentation of Consumer Experience**

### **A. Court Observation**

By far, the most intensive source of information came from the court observation project, a key ingredient to our self-education. We launched the court observation project in the summer of 2001 with the goal of organizing and quantifying the processes in Philadelphia Family Court's Domestic Relations Division (Domestic Relations Division) that are of concern to women seeking justice in the court system. We had formed a number of hypotheses about areas of concern in Family Court based on the calls received by the WLP Telephone Counseling Service and our own experiences in Court.

#### **1. Development and Revision of Survey Instruments**

Working with a social science researcher, we established areas of inquiry and developed two survey instruments: one for custody and one for protection from abuse (PFA) cases. We developed the forms to be neutral and objective, particularly because our other sources of information were more subjective in nature. We decided to collect such information as length of proceedings, full and fair case presentation, and outcomes. A few subjective questions were asked in key areas, such as the quality of information provided by the court and staff-litigant interactions. Although the forms include many of the same questions, two distinct forms were developed because of some differences between custody and PFA proceedings.

Initial drafts of the court observation survey instruments were field tested by volunteers, who gave us feedback about the clarity of the questions. Early drafts provided extensive narrative data on the court process which, although rich in meaning, would prove to be untenable for analysis when collated in any volume. The instruments were further refined to provide more pre-determined choices to simplify data input and analysis. Many of the revisions were the result of needing to add directions to clarify the expectations of the court observation volunteers and to focus their observations of the process. Although the instrument underwent some modification while data was being collected, we were careful to track similar questions on the different forms and link the forms in our database to insure that we were collecting the same data on all forms. Ultimately, the custody data instrument went through six revisions; the PFA data instrument went through eight revisions. The final court observation survey instruments are attached in Appendix B.

#### **2. Court Observation Volunteers**

We developed written guidelines for observers and trained our first complement of sixteen summer volunteer observers in the summer of 2001. We provided training on the instrument to each volunteer. Three subsequent groups of volunteers supported our effort. These volunteers were students mostly from local undergraduate schools and graduate schools of social work and law, many of whom were either WLP volunteers for

our Telephone Counseling Service or summer law interns. A total of thirty-seven volunteers participated in the project.

Observers were not pre-assigned to courtrooms. Rather they were given the Court's published list of courtroom assignments for the week and instructed to visit PFA and custody hearings. The data collection therefore does not include an equal distribution of observations of different judges or types of proceedings. In fact, the behavior of some judges deterred observers from entering certain courtrooms for observations, limiting our observations of those judges. In addition, observers were rarely permitted to remain anonymous, as several judges routinely asked them to identify themselves.

Court observation ended July 30, 2002.

### **3. Data Collection and Data Entry**

We hired a computer programmer to develop a database to simplify data input. Although we had initially planned to have each court observation volunteer input the data observed into the system, it logistically became simpler to use one staff member to input data from handwritten observation forms. This program associate became a focal point for data collection issues and an invaluable resource when analyzing the data.

Nine hundred and thirty-five observations were collected over the twelve months of the court observation project—678 in PFA hearings and 257 in custody hearings. Part of the study design was to have multiple volunteers observe the same case so we could test the reliability of the instruments. This design worked out well. Since observing in court was new for both the observers and the Court, our volunteers felt more comfortable going out in groups of two and three. The unduplicated observations for which the data analysis was conducted totaled 566 in PFA cases and 218 in custody cases.

### **4. Reliability**

To test the reliability of the data between observers, matched files were analyzed where two observers recorded observations on the same case. In PFA cases, there were a total of 216 observations that were matched (108 pairs), and in custody there were seventy-eight observations that were matched (39 pairs).

Nine items were analyzed from each of the two surveys, representing a range of subjective and objective questions. Questions that had generated the most issues from the court observation volunteers were included to ensure that these questions could be utilized with confidence in the data analysis.

Chi-square<sup>1</sup> was utilized to test the correlation between the primary and secondary observer. Chi-square was utilized because most of the data in the instruments is categorical and it would allow us to know whether or not the correlation between the two

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<sup>1</sup> The chi-square test is a test of statistical significance appropriate for two nominal variables. EARL BABBIE, ET AL., ADVENTURES IN SOCIAL RESEARCH 443 (2000).

observers was statistically significant or whether it was likely to have occurred by chance. Data obtained for each of the nine questions analyzed in the PFA and custody instruments was found to be statistically significant utilizing the chi-square, indicating that despite the large number of volunteers and the range of subjective and objective questions, the instrument is reliable.

## **5. Reported Data**

We have not reported on all data collected. In some cases, there were insufficient numbers in a category to support findings, such as outcomes of hearings. In other cases we concluded that the information was immaterial to the subject matter. In still others, we concluded that the question was not posed clearly enough to elicit the information we were seeking. The reported data is analyzed from a number of angles, using both combined data from our observations of custody and PFA proceedings and observations of each type of proceeding, as warranted by the findings. We examine both data collected in response to individual questions on the data collection instruments and data that is the result of cross-tabulating responses to different questions within each data set. The data that we reported is data that we have determined is significant; therefore, it can offer meaningful information in advancing our understanding of the Domestic Relations Division. Where data was cross-tabulated, we tested for statistical significance; all reported data tested statistically significant.

In addition, with respect to the data reported, the total number of observations of petitioners relative to respondents may vary from table to table, depending on how many observers answered the relevant questions.

We have chosen to present our data in charts without using standard data descriptors typically used by social scientists. Thus, we have used “N” to delineate the total population sample and the figure “#” to denote the sample size number in the column headings and referred to the percentages in parenthesis as “xx of xx observations.” We chose this method because we concluded it would be more understandable to the audience we expect to review this report.

### **B. Narratives by WLP Telephone Counselors and Court Observers**

Although the WLP has been replete with anecdotal information about the experiences of our callers in court, we have never formally recorded that information. For purposes of this study, we therefore asked our volunteer telephone counselors and court observers to provide us with narrative descriptions of calls they handled and court proceedings they observed. Since callers to WLP’s Telephone Counseling Service typically have complaints about their experiences in court, it was not possible to ask them to provide narratives of “good” experiences as well as “bad” experiences. However, we encouraged our counselors to provide us with both good and bad experiences with respect to their court observation. We provided a format for telephone counseling narratives, which included summarizing the history and facts and identifying issues, next steps, and unmet needs.

We received twenty-one written narratives from telephone calls made to the WLP during the summer of 2002. The number is small because we only started collecting narratives during the second year of our study and counselors had to prioritize answering telephone counseling inquiries over writing up narratives. Of these narratives, sixteen were custody cases, two were abuse cases, two cases involved custody and support, and one case was a support matter. We received thirteen written narratives of court proceedings observed during the summer of 2002. Two of these narratives detailed custody cases, and eleven described abuse cases.

### **C. Survey of WLP Telephone Counseling Callers**

In order to obtain first-hand impressions from litigants about their experience in the Domestic Relations Division, the WLP developed a survey instrument to administer to callers to the WLP's Telephone Counseling Service who were involved in Domestic Relations Division litigation. The survey was designed to find out the level of litigant satisfaction with her court experience as well as the litigant's access to representation, financial barriers, timing issues, and access to other assistance from the court. The form is attached as Appendix C.

Telephone counselors were instructed to ask callers who informed us that they were involved in a Domestic Relations Division matter if they were willing to take the survey. Many callers refused to take the survey because they had a bad experience and wanted to put it behind them. If a caller agreed to participate in the survey, she was referred to the WLP staffer who administered the survey, which took place between April 16 and August 8, 2002.

Ten callers agreed to take the survey. All of the callers were female; three were Caucasian, five were African Americans, and one was Hispanic. The Domestic Relations Division matters consisted of four that involved child custody, three that involved PFA, and four that included support, with one litigant having two matters. Eight callers surveyed were petitioners; two were respondents.

### **D. Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System**

On October 15, 1999, the Supreme Court of Pennsylvania appointed the Committee on Racial and Gender Bias in the Justice System to study the role of bias in the Pennsylvania court system. The Committee issued its final report on March 3, 2003. The report includes information on family law proceedings and describes practices and problems that are common throughout the state, including Philadelphia. Some of this information was drawn from a facilitated roundtable discussion by family law attorneys on access to justice in Family Court, which the WLP helped to organize. This roundtable was held in Philadelphia in January 2001. Sixteen attorneys participated, nine of whom practice family law in Philadelphia. For purposes of this report, we cited comments made specific to practice in the Domestic Relations Division of Philadelphia Family Court.

**E. Testimony From Hearings on Unmet Needs of Victims of Domestic Violence Before Council of the City of Philadelphia, Committees on Public Safety and Public Health and Human Services**

The Committees on Public Safety and Public Health and Human Services of the Council of the City of Philadelphia held public hearings on December 17 and 18, 2002, on the response of the city to the unmet needs of domestic violence victims. These hearings were authorized by Resolution 020613. Testimony was provided by the Administrative Judge of Family Court and the Supervising Judge of the Domestic Relations Division as well as by attorneys who represent victims of domestic violence in domestic relations proceedings.

**F. Test Calls to Court Customer Service**

In order to evaluate the amount and quality of assistance available to litigants by telephone, a WLP staff member made tester calls to the Domestic Relations Division's Customer Service Unit. She made thirty-six calls between July 24 and October 7, 2002, at varying times between 9 a.m. and 5 p.m. Ten calls were made in July, thirteen in August, ten in September, and three in October. Sixteen of the calls were made in the morning, and nineteen were made in the afternoon. The calls were distributed throughout the week. Nine different realistic scenarios were prepared for mock role plays by the caller. Domestic Relations staff were not to be informed that the caller and fact patterns were not genuine. A form was created to record the details of each call. No answers and response by recorded message were also noted. The form is attached as Appendix D.

**G. Review of Court Information and Notices**

In order to evaluate what information and paperwork is given to litigants, we requested from the Domestic Relations Division all information and forms it provides to consumers. The Domestic Relations Division provided us with no written information that explained the generic processes of custody, support, or divorce proceedings and informed us that it has none for consumer distribution. It provided us with, and we examined, copies of forms, notices, and other information that it provides to consumers, including information about the process involved in serving PFA papers, how to file for emergency custody, and referrals for social and legal service agencies.

**Family Court Information Form - PFA**

- 1. **Volunteer:** *(see list)* \_\_\_\_\_
- 2. **Date** *(MM-DD-YY):* \_\_\_\_\_
- 3. **Presiding Judge:** *(see list)* \_\_\_\_\_
- 4. **Time On/Off bench** *(write time on or off per session not per case):* On \_\_\_\_ Off \_\_\_\_ On \_\_\_\_ Off \_\_\_\_
- 5. **What, if anything, did you experience and/or observe during your visit to Family Court?** *(i.e. access to building or courtroom, security, staff interactions with users, interactions among users. See list.)*
  
- 6. **Courtroom #:** \_\_\_\_\_
- 7. **Time of Listing:**  9:00       1:00       Specific listing \_\_\_\_\_
- 8. **Number of cases on the list:** \_\_\_\_\_
- 9. **Parties present:**      **Res.**  Y       N           **Pet.**  Y       N
- 9a. **Action taken if either party was absent:**  Continued  Dismissed  Temporary Order       Final Order
- 10. **Approximate time given to each litigant** *(in minutes):*  
**Pet:**     0-5     6-10     11-15     16-20     21 or more  
**Res:**     0-5     6-10     11-15     16-20     21 or more
- 11. **Approximate time spent on entire case** *(in minutes):*  
 0-5     6-10     11-15     16-20     21-25     26-30     31-35     36-40     41 or more
- 12. **Petitioner's Sex:**     F  M    **Race:**     Cauc.     Af.Am.     His./Lat.     Asian     Other/Unknown
- 13. **Respondent's Sex:**  F  M    **Race:**     Cauc.     Af.Am.     His./Lat.     Asian     Other/Unknown
- 14. **Relationship between parties:**  
 Married     Divorced     Separated     Unmarried     Relatives     Other/Unknown
- 15. **Attorneys present?**      **Pet.**     Yes     No           **Res.**     Yes     No
- 16. **Purpose of hearing:**     Temporary     Final     Contempt     Extend length     Vacate/modify
- 17. **Number of times listed** *(if revealed):* \_\_\_\_\_
- 18. **Was WAA advocate present in**       courtroom?            waiting room?

19. **Did the litigants express a desire to present** *(check for yes)*

- |             |  |             |  |
|-------------|--|-------------|--|
| <b>Pet:</b> | <input type="checkbox"/> Own Testimony         | <b>Res:</b> | <input type="checkbox"/> Own Testimony         |
|             | <input type="checkbox"/> Witnesses             |             | <input type="checkbox"/> Witnesses             |
|             | <input type="checkbox"/> Expert Witnesses      |             | <input type="checkbox"/> Expert Witnesses      |
|             | <input type="checkbox"/> Documents             |             | <input type="checkbox"/> Documents             |
|             | <input type="checkbox"/> Other (identify)_____ |             | <input type="checkbox"/> Other (identify)_____ |

20. **Did the litigants present what they wanted to present** *(check for yes)*

- |             |  |             |  |
|-------------|--|-------------|--|
| <b>Pet:</b> | <input type="checkbox"/> Own Testimony         | <b>Res:</b> | <input type="checkbox"/> Own Testimony         |
|             | <input type="checkbox"/> Witnesses             |             | <input type="checkbox"/> Witnesses             |
|             | <input type="checkbox"/> Expert Witnesses      |             | <input type="checkbox"/> Expert Witnesses      |
|             | <input type="checkbox"/> Documents             |             | <input type="checkbox"/> Documents             |
|             | <input type="checkbox"/> Other (identify)_____ |             | <input type="checkbox"/> Other (identify)_____ |

21. **If not, why not:**

- Judge denied because inadmissible
- Judge denied scheduling another hearing
- Other \_\_\_\_\_

22. **Did either party cross-examine his/her opponent and/or his/her opponent's witnesses?**

- |             |                              |                             |             |                              |                             |
|-------------|------------------------------|-----------------------------|-------------|------------------------------|-----------------------------|
| <b>Pet.</b> | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <b>Res.</b> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|-------------|------------------------------|-----------------------------|-------------|------------------------------|-----------------------------|

23. **Did either party formally object to his/her opponent's evidence?**

- |             |                              |                             |             |                              |                             |
|-------------|------------------------------|-----------------------------|-------------|------------------------------|-----------------------------|
| <b>Pet.</b> | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <b>Res.</b> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|-------------|------------------------------|-----------------------------|-------------|------------------------------|-----------------------------|

24. **If so, what was judge's response?**     Sustained     Overruled     No Response

25. **Did either party informally object/protest his/her opponent's evidence?**

- |             |                              |                             |             |                              |                             |
|-------------|------------------------------|-----------------------------|-------------|------------------------------|-----------------------------|
| <b>Pet.</b> | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <b>Res.</b> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|-------------|------------------------------|-----------------------------|-------------|------------------------------|-----------------------------|

26. **If so, what was the Judge's response?**     Sustained     Overruled     No Response

27. **Did the Judge ask questions of the parties?**

- |             |                              |                             |             |                              |                             |
|-------------|------------------------------|-----------------------------|-------------|------------------------------|-----------------------------|
| <b>Pet.</b> | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <b>Res.</b> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|-------------|------------------------------|-----------------------------|-------------|------------------------------|-----------------------------|

28. **How thoroughly did the judge explain the process to the participants?** *(Rate on a scale of 1 – 5 with 1 being no explanation at all, and 5 being very thorough explanation.)* \_\_\_\_\_



29. **Did you think that the relevant party understood the judge's explanation?**  Yes  No

\*31. **Was the entire hearing held on the record?**  Yes  No

32. **If not, why?** *(see list)* \_\_\_\_\_

33. **Were any tests or exams ordered?**

<b>Pet:</b>	<input type="checkbox"/>	Drug Test	<b>Res:</b>	<input type="checkbox"/>	Drug Test
	<input type="checkbox"/>	Home Visit/Investigation		<input type="checkbox"/>	Home Visit/Investigation
	<input type="checkbox"/>	Psych/MH assessment		<input type="checkbox"/>	Psych/MH assessment

34. **Quality of interactions between judge and litigants?** *(See list)*

35. **Quality of interactions between court staff and litigants?** *(See list)*

\* Question #30 omitted

36. **Disposition of case:**

		<b>Did Either Party Ask For?</b> <i>check if yes</i>	<b>Did Judge Order</b> <i>check if yes</i>	<b>Order by Agreement</b> <i>check if yes</i>
<b>OUTCOME</b>				
	Final Order			
	Temporary Order			
	Continuance			
	Withdrawal of Petition			
	Dismissed			
<b>LENGTH OF ORDER</b>				
	Number of months ( <i>circle one</i> )	3, 6, 9, 12, 15, 18	3, 6, 9, 12, 15, 18	3, 6, 9, 12, 15, 18
<b>CONTENT OF ORDER</b>				
	No Contact			
	Eviction			
	Custody			
	Visitation			
	Supervised visitation			
	Safe pick-up/drop-off			
	Child Support			
	Spousal Support			
	Relinquish Weapons			
	Payment for Reasonable Losses			
	No Stalking/Harassment			
	Counseling			
	Contempt – Prison			
	Contempt – Fine (List Amount)			
	Other (specify)			

37. **Were mutual orders granted?**       Yes       No

38. **If yes, were separate petitions filed?**       Yes       No

39. **Please record any other relevant information in the space below.**

**Family Court Information Form - Custody**

- 1. **Volunteer:** *(see list)* \_\_\_\_\_
- 2. **Date** *(MM-DD-YY):* \_\_\_\_\_
- 3. **Presiding Judge:** *(see list)* \_\_\_\_\_
- 4. **Time On/Off bench** *(write time on or off per session not per case):* On \_\_\_\_ Off \_\_\_\_ On \_\_\_\_ Off \_\_\_\_
- 5. **What, if anything, did you experience and/or observe during your visit to Family Court?** *(i.e. access to building or courtroom, security, staff interactions with users, interactions among users. See list.)*
  
- 6. **Courtroom #:** \_\_\_\_\_
- 7. **Time of Listing:**  9:00       1:00       Specific listing \_\_\_\_
- 8. **Number of cases on the list:** \_\_\_\_\_
- 9. **Parties present:**                      **Res.**  Y       N                      **Pet.**  Y       N
- 9a. **Action taken if either party was absent:**  Continued  Dismissed  Temporary Order  Final Order
- 10. **Approximate time given to each litigant** *(in minutes):*  
  
    **Pet:**  0-5       6-10       11-15       16-20       21 or more  
    **Res:**  0-5       6-10       11-15       16-20       21 or more
- 11. **Approximate time spent on entire case** *(in minutes):*  
  
     0-5       6-10       11-15       16-20       21-25       26-30       31-35       36-40       41 or more
- 12. **Petitioner's Sex:**     F     M    **Race:**  Cauc.     Af.Am.     His./Lat.     Asian     Other/Unknown
- 13. **Respondent's Sex:**  F     M    **Race:**  Cauc.     Af.Am.     His./Lat.     Asian     Other/Unknown
- 14. **Relationship between parties:**  
  
     Married     Divorced     Separated     Unmarried     Relatives     Other/Unknown
- 15. **Attorneys present?**    **Pet.**     Yes     No                      **Res.**     Yes     No
- 16. **Purpose of hearing:**     Initial order     Modification     Status/Continuance     Contempt
- 17. **Number of times listed** *(if revealed):* \_\_\_\_\_
- 18. **Did the children involved testify?**     Yes     No
- 19. **If so, in**             open court             Judge's chambers?

20. **Did the litigants express a desire to present** *(check for yes)*

- Pet:**
- Own Testimony
  - Witnesses
  - Expert Witnesses
  - Documents
  - Other (identify) \_\_\_\_\_

- Res:**
- Own Testimony
  - Witnesses
  - Expert Witnesses
  - Documents
  - Other (identify) \_\_\_\_\_

21. **Did the litigants present what they wanted to present** *(check for yes)*

- Pet:**
- Own Testimony
  - Witnesses
  - Expert Witnesses
  - Documents
  - Other (identify) \_\_\_\_\_

- Res:**
- Own Testimony
  - Witnesses
  - Expert Witnesses
  - Documents
  - Other (identify) \_\_\_\_\_

22. **If not, why not:**

- Judge denied because inadmissible
- Judge denied scheduling another hearing
- Other \_\_\_\_\_

23. **Did either party cross-examine his/her opponent and/or his/her opponent's witnesses?**

- Pet.**     Yes             No                      **Res.**     Yes             No

24. **Did either party formally object to his/her opponent's evidence?**

- Pet.**     Yes             No                      **Res.**     Yes             No

25. **If so, what was judge's response?**     Sustained     Overruled     No Response

26. **Did either party informally object/protest his/her opponent's evidence?**

- Pet.**     Yes             No                      **Res.**     Yes             No

27. **If so, what was the Judge's response?**  Sustained     Overruled     No Response

28. **Did the Judge ask questions of the parties?**    **Pet.**     Yes     No                      **Res.**     Yes     No

29. **How thoroughly did the judge explain the process to the participants?** *(Rate on a scale of 1 – 5 with 1 being no explanation at all, and 5 being very thorough explanation.)* \_\_\_\_\_

30. **Did you think that the relevant party understood the judge's explanation?**     Yes     No

31. **Was the entire hearing held on the record?**     Yes                       No

32. **If not, why?** *(see list)* \_\_\_\_\_

33. **Were any tests or exams ordered?**

	<b>Pet</b> <i>check if yes</i>	<b>Res</b> <i>check if yes</i>	<b>Child/ren</b> <i>check if yes</i>
Drug Test			
Home Visit/ Investigation			
Psych/MH Assessment			
Paternity			

34. **Quality of interactions between judge and litigants?** *(See list)*

35. **Quality of interactions between court staff and litigants?** *(See list)*

36. **Does the case involve any allegations of domestic violence?**  Yes  No

37. **If yes, what if any evidence was presented and/or offered?**

Own testimony  Witnesses  PFA  Documentation\_\_\_\_\_

38. **If so, did judge accept evidence?**  Yes  No

39. **Disposition of case:**

		<b>Did Either Party Ask For?</b> <i>R = Respondent P = Petitioner C = Child</i>	<b>Who did judge order to receive?</b> <i>R = Respondent P = Petitioner C = Child</i>	<b>Order by Agreement</b>  <i>check if yes</i>
<b>Legal Custody</b>				
	Sole			
	Shared			
	* Decision making re: medical care			
	* Decision making re: schooling/child care			
	* Decision making re: religion			
<b>Physical Custody</b>				
	Primary			
	Shared			
	* 50 – 50			
	* Less than 50 – 50			
<b>Visitation</b>				
	Safe pick-up drop-off			
	Supervised			
	* 1801 Vine Street			
	* third party			
<b>Counseling</b>				
	Individual			
	Family			
	Child/Children			
Other (specify)				

40. **Was case scheduled for another hearing?**       Yes       No

41. **If so, when?** \_\_\_\_\_

42. **Please record any other relevant information in the space below.**

---

## Telephone Counseling Survey of Family Court Litigants

### Introduction to Client:

The Women's Law Project is evaluating how well family court serves clients. We are surveying our callers and would like to ask you a number of questions relating to your experience in family court. We will keep your name confidential. Are you willing to answer these questions, it will take about 10 minutes? Is this a good time, or is there a time I could call you back?

If caller says no, say thank you and end call.

If the caller says yes, proceed:

### Survey Questions

1. **Date of interview:** (format: 00-00-00)     \_\_\_ \_\_\_ - \_\_\_ \_\_\_ - \_\_\_ \_\_\_
  
2. **Name of interviewer**
  - [insert name] (1)
  - [insert name] (2)
  - [insert name] (3)
  - [insert name] (4)
  - [insert name] (5)
  - [insert name] (6)
  - [insert name] (7)
  
3. **Name of interviewee:** \_\_\_\_\_
  
4. **County of interviewee's residence**
  - Philadelphia (1)
  - Montgomery (2)
  - Delaware (3)
  - Chester (4)
  - Bucks (5)
  - Other, specify which county (6): \_\_\_\_\_
  
5. **Gender of interviewee**            F (1)        M (2)
  
6. **Race of interviewee**
  - Caucasian. (1)
  - African American (2)
  - Hispanic/Latino(3)
  - Asian (4)
  - Other/Unknown (5)

**7. What was/is your goal in going to family court? (check all that apply)**

- Obtaining custody of my child (1)
- Visitation (2)
- PFA (3)
- Other (4) \_\_\_\_\_

**8. Are you the:**

- Petitioner (did you file the action?) (1)
- Respondent (did other side file the action against you?) (2)

**9. Did you get what you wanted by going to family court?**

- Y (1)
- N (2)
- Not yet. Proceeding not complete (3)

**First, I have a few questions about being represented by a lawyer and court fees:**

**10. Were you represented by counsel?**

- Y (1) *(if yes, skip to question 11)*
- N (2)

**10a. If you were not represented by counsel, why not?**

- could not afford (1)
- could not find (2)
- other specify (3) \_\_\_\_\_

**10b. If you were not represented by counsel, were you informed about the availability of pro bono counsel (*being represented by a volunteer attorney at no cost*)?**

- Y (1)
- N (0) *(if no, skip to question 11)*

**10c. If you were informed about the availability of pro bono counsel did you try to obtain legal counsel?**

- Y (1)
- N (0)

**11. Were you required to pay any court fees related to your proceeding?**

- Y (1)
- N (0) *(if no, skip to question 12)*

**11a. How much were you required to pay in court fees?**

- \$0 – \$50 (1)
- \$50 - \$100 (2)
- \$100 - \$150 (3)
- \$150 - \$ 200 (4)
- \$200 and over (5)



**11b. What were the court fees for? (check all that apply)**

- filing fees (1)
- expert witnesses (2)
- psych. evaluation (3)
- other (please specify) (4) \_\_\_\_\_

**11c. Was it a hardship to pay these court fees?**

- Y (1)
- N (0)

**11d. Were you informed of any options for:**

- reduced fees  Y (1)  N (0)
- waiver of fees  Y (1)  N (0)

*(if no to both, skip to question 12)*

**11e. If informed about reduced or waiver of fees, did you request either?**

- Y (1)
- N (0) *(if no, skip to question 12)*

**11f. If so, did you receive:**

- reduced fees  Y (1)  N (0)
- waiver of fees  Y (1)  N (0)

**Now I have some questions about when you were scheduled to be in court and time in between hearings:**

**12. Did hours/days of court operation present any problems for you?**

- Y (1)  N (0)

**13. Did you have to miss work to go to court?**

- Y (1)  N (0)

**14. Would it have been helpful if the court were open evenings and weekends?**

- Y (1)  N (0)

**15. How many times have you had to go to court for this particular case?**

- 0-3 times (1)
- 3-6 times (2)
- 6-9 times (3)
- 9 or more times (4)

**16. How many months between the time the case was filed and the first hearing?**

- 0 – 3 months (1)
- 4 – 7 months (2)
- 7 or more months (3)

17. **If not complete, how many months between the last court date and next court date?**
- 0 – 3 months (1)
  - 4 – 7 months (2)
  - 7 or more months (3)
18. **Is the proceeding finished?**       Y (1)       N (0)
19. **How many months between the time the case was filed and the time it was completed?**
- 0 - 6 months (1)
  - 7 – 12 months (2)
  - 13 - 18 months (3)
  - 19 or more months (4)
20. **Has your case generally been scheduled for:**
- a particular time (1)
  - a morning or afternoon list (2)
  - a list for the day? (3)
21. **If your case was on a list with other cases at the same time, did the judge start the list of cases on time?**
- Y (1)       N (0)
22. **How many hours on average did you have to wait for your case to be called on scheduled dates?**
- 0 - 1 hours (1)
  - 2 - 3 hours (2)
  - 4 - 5 hours (3)
  - 6 or more hours (4)
23. **Did you feel that you had to wait longer than you should have?**
- Y (1)       N (0)

**I have a few questions about child care.**

24. **Were you informed of the availability of child care in the court?**
- Y (1)
  - N (0)
25. **Did you use court child care?**
- Y (1) *(if yes, skip to question 26)*
  - N (0)

**25a. If you didn't use court child care, why not? (check all that apply)**

- Do not have children (1)
- Did not bring children to court (2)
- Couldn't find court child care (3)
- Not open (4)
- No caretaker present (5)
- Afraid case would be called while taking child there (6)
- Required to stay with child and afraid case would be called while there (7)
- Cost (8)
- Other (9) \_\_\_\_\_

**26. Did you have any difficulties locating the courthouse?**

- Y (1)
- N (0) *(if no, skip to question 27)*

**26a. If you had difficulties locating the courthouse, why?**

- No signs (1)
- Court not on same street as address (2)
- Could not get directions (3)
- Other (4) \_\_\_\_\_

**27. Did you take anyone with you to court?**

- Y (1)
- N (0) *(if no, skip to question 28)*

**27a. If you took someone with you to court, who did you take? (check all that apply)**

- Witness(es) (1)
- Support person(s) such as relatives, friends (2)
- Domestic violence advocate (3)
- Someone to provide for safety (4)
- Someone to care for child (5)
- Other (6) \_\_\_\_\_

**27b. If you did take anyone with you to court, did you want them to accompany you into the: (check all that apply)**

- Courthouse (1)
- Waiting room (2)
- Courtroom? (3)
- None of the above (4)

**27c. If so, were they permitted to accompany you into the: (check all that apply)**

- Courthouse (1)
- Waiting room (2)
- Courtroom? (3)
- Not applicable (4)

28. **Were you given the opportunity to present all the evidence you wanted to?**  
 Y (1)       N (0)

29. **Were you given the opportunity to present:** (check all that apply)  
 Own testimony (1)  
 Witnesses (2)  
 Expert witnesses (3)  
 Documents (4)  
 Questions to opponent (5)  
 Other (6) \_\_\_\_\_

30. **How many minutes was your hearing before the judge?**  
 0 – 5 minutes (1)  
 6 – 10 minutes (2)  
 11 - 15 minutes (3)  
 16 - 20 minutes (4)  
 21 or more minutes (5)

**The next few questions are about courthouse security:**

31. **Do you believe the courthouse has adequate security?**  
 Y (1)       N (0)

32. **Were there security officers or sheriffs present:**  
in the waiting room?  Y (1)       N (0)  
In the court room?     Y (1)       N (0)

33. **During your family court visit, did you experience any of the following?**  
Threats                       Y (1)       N (0)  
Verbal attacks               Y (1)       N (0)  
Physical attacks             Y (1)       N (0)

*(if all no's skip to question 34)*

33a. **If you experienced any of the above, did it occur:**  
On the way to the court house     Y (1)       N (0)  
In the courthouse                     Y (1)       N (0)  
On your way out of the courthouse  Y (1)       N (0)

33b. **If you experienced any of the above problems, did security officers or sheriffs provide assistance?**  
 Y (1)       N (0)

34. Were you informed about any security assistance that could be provided in helping you leave the courthouse?

- Y (1)  
 N (0) *(if no, skip to question 35)*

34a. If we were informed about security assistance, did you request assistance?

- Y (1)  N (0)

34b. If you requested security to assist you leaving the courthouse, was it provided?

- Y (1)  N (0)

Now I'm going to ask you about how the court assisted you to help you understand the different aspects of the court procedures.

35. Did the court inform you that it could provide any assistance to you?

- Y (1)  N (0)

36. Did you seek assistance from the court before the hearing to help you understand the court's procedures.

- Y (1)  
 N (0) *(if no, skip to question 37)*

36a. If you sought assistance before the hearing, did you seek it

- by telephone (1)  
 in person (2)  
 in written form (3)

36b. If you sought assistance before the hearing, was it provided?

- Y (1)  N (0)

37. Did the court provide assistance to fill out forms?  Y (1)  N (0)

38. Were forms you needed readily available?

- Y (1)  N (0)  didn't need forms (3)

39. Did the court provide any informational brochures about court procedures?

- Y (1)  N (0)

40. Were you offered an opportunity to see your court file?  Y (1)  N (0)

41. Did the judge assist you in understanding the proceeding?  Y (1)  N (0)

42. In thinking back over your court experience, what kind of assistance would have been helpful?

- Brochures (1)  
 Court staffer to answer questions (2)  
 Explanations by judge (3)  
 Other (4) \_\_\_\_\_

- 43. Did the notices you received from the court provide you with sufficient information in understandable language?**
- Y (1) *(if yes, skip to question 43)*  
 N (0)
- 43a. If not, what difficulties did they present?**
- I do not read (1)  
 I do not speak English and notice was in English (2)  
 I can read but could not understand it (3)  
 Court schedule did not provide enough information about proceeding (4)  
 Other (5) \_\_\_\_\_
- 44. Do you believe you were treated fairly by judge who heard your case?**  
 Y (1)       N (0)
- 45. Do you believe you were treated fairly by court personnel?**    Y (1)    N (0)
- 46. Do you believe you were treated respectfully by judge who heard your case?**  
 Y (1)       N (0)
- 47. Do you believe you were treated respectfully by court personnel?**  
 Y (1)       N (0)

**Family Court Tester Calls to Customer Service**

---

Caller Name: \_\_\_\_\_

Date & day of the week: \_\_\_\_\_

Time: \_\_\_\_\_

How did the court respond?

- No Answer
- Busy
- Voice mail was available
- Voice mail was not available
- Automated response then there was No Answer
- Automated response then contacted the court

Reason for Call: \_\_\_\_\_  
(Scenario Number)

Who did you speak with? \_\_\_\_\_

What information did you request?: \_\_\_\_\_

\_\_\_\_\_

How did the court respond?: \_\_\_\_\_

\_\_\_\_\_

Additional Information: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **Scenarios**

### Scenario 1

Hi, I am calling to find out how I can get a restraining order so I can get my boyfriend out of my house. (If they ask your age say something over 18).

### Scenario 2

The police told me I could get an order to keep my husband away how do I do that?

### Scenario 3

I want to get a stay away order for my son. Do I do that at this court? (If they ask the caller wants to protect the son from the son's father)

### Scenario 4

Do I go here to get an order that will protect me from my son? (If they ask the son is over 18).

### Scenario 5

I need to get papers for custody how can I do that?

### Scenario 6

I want custody of my son what do I need to bring with me when I come to court? (If they ask if you are coming to file for custody or come for a hearing say a **hearing**)

### Scenario 7

Where do I go to get custody of my daughter?

### Scenario 8

Hi, I am calling to find out how I can get a restraining order so I can get my boyfriend out of my house. (If they ask your age say something **under** 18).

### Scenario 9

I want custody of my daughter what do I need to bring with me when I come to court? (If they ask if you are coming to file for custody or come for a hearing say to **file**)



## Pro Se Assistance Programs

Many counties in many different states have initiated and/or incorporated pro se assistance in many different forms into their day-to-day court operations. A 1999 survey revealed that at least forty-five states provide pro se assistance through approximately 152 different programs.<sup>1</sup> These services range from self-help centers or kiosks in malls and libraries to pro se assistance clinics run by attorneys and staffed by volunteer law students. Most programs are sponsored by the state supreme court and focus on developing uniform policies and practices in order to better govern legal assistance and maximize access to justice for pro se litigants.<sup>2</sup> The majority of the programs are supported partially by state funds but primarily rely on local court and/or county financing for most of the services.<sup>3</sup> Most of the programs report collaboration and partnerships with other community groups such as bar associations, social service agencies, and law schools.<sup>4</sup>

The programs are a direct result of the increase in the numbers of pro se litigants that courts, particularly family courts, are seeing. Survey respondents reported that the increase of unrepresented litigants has led to an increase in “delays in courtroom proceedings, overburdened clerk’s offices and poorly prepared pleadings and papers, frustrated judges attempting to remain neutral and impartial while attending to the legal needs of the pro se litigants, and disgruntled attorneys who have had to deal with opposing parties not represented by counsel.”<sup>5</sup>

As noted above, a range of services exists. Many programs provide several different services. The nature and scope of these services are described below.

- **Self-Help Centers:** These centers typically distribute educational and informational materials and packets, assist in filling out forms, provide access to computers and website connections, and make referrals for legal and social services. Some centers also provide seminars or workshops in certain areas to explain the procedural aspects of a case or to walk litigants through the filing of a complaint. Some centers are staffed with paid or volunteer lawyers, others with trained clerical and paralegal staff.<sup>6</sup>
- **Family Law Facilitators:** These facilitators, some of whom are attorneys, provide assistance to litigants for issues arising in family court. The facilitators can be useful in expediting the processing of family law cases as well as collecting statistics for effective case management.<sup>7</sup>

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<sup>1</sup> Beth Lynch Murphy, American Judicature Society, Results of a National Survey of Pro Se Assistance Programs: A Preliminary Report (2000), at <http://www.ajs.org/prose/Murphy/htm>.

<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.* at 6.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.* at 6.

<sup>7</sup> *Id.* at 6-7.

• **Bar, Pro Bono, and Lawyer-Referral Programs:** Some assistance programs have collaborated with legal services programs, law school clinics, and bar associations to operate offices through the local court or provide clinics and/or “advice desks” at various locations.<sup>8</sup>

• **Pro Se Clinics:** Many pro se clinics offer a full range of services, including filling out and responding to pleadings and court orders. Many clinics focus on conveying information and educating litigants through classes and/or workshops that give the attendees information they need to represent themselves.<sup>9</sup>

• **Technology-Based Assistance:** These innovative programs provide the technology litigants need to fill out forms, prepare pleadings, and in some cases, initiate actions.<sup>10</sup>

All of the survey respondents reported that public access to courts, especially for low-income litigants, has increased as a result of their various pro se assistance programs. In fact, “[t]he availability of court-approved forms and instructions, informational services and free legal clinics, and referrals to legal and social service programs has improved the delivery of information to the public and the quality and uniformity in the pleadings filed.”<sup>11</sup> These programs also “relieve judicial assistants and clerks from dealing with the needs of pro se litigants, thus allowing them to concentrate on their regular duties.”<sup>12</sup>

Moreover, the respondents reported that the unexpected benefit of case management assistance, especially in family courts, also proved useful. The programs helped the cases to move expeditiously through the court system, reducing the need for continuances or, in some cases, dismissal without relief.<sup>13</sup> The benefit to the litigants is that they are now advised of, and thus more in control of, their cases, resulting in fewer rescheduled hearings due to incomplete documents and leading to the prompt resolution of their cases. Last, the court benefits by feeling confident that pro se litigants are well informed, prepared, and ready to resolve their cases.<sup>14</sup>

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<sup>8</sup> *Id.* at 7.

<sup>9</sup> *Id.* at 7-8.

<sup>10</sup> *Id.* at 8.

<sup>11</sup> *Id.* at 8.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 9.

<sup>14</sup> *Id.*

**First Judicial District of Pennsylvania**  
**Court Improvement Account Encumbrance Report**  
**SUMMARY OF PROJECTS AND CONTRACTED FUNDS**  
**Fiscal Year 2001 and 2002 Thru December 31, 2001**

Document Index	PROJECTS	Original Project Budget	Contracted / Projected Budget	Project Expenditures for FY 2001	Project Expenditures for FY 2002	Balance of Project Budget
1	New Network :	\$ 6,000,000				
	Server Hardware / Software		624,764			624,764
	Training		800,000			800,000
	3rd Party Service Provider		795,150			795,150
	Backup Software and miscellaneous expenses		250,000			250,000
	Upgrade PC's and CJC Hardware/Software	2,000,000	1,968,001			1,968,001
	Upgrade Printer at CJC	300,000	75,000			75,000
2	Deloitte Consulting for Enterprise Infrastructure		2,483,920			2,483,920
	Deloitte Consulting :					
3	Project Management Office	500,000	1,113,000		507,954	605,046
4	Technology Acquisitions (routine & on-going)	2,000,000	2,000,000	874,796	918,670	206,534
	Courtroom 21 & Jury Enhancements	300,000	160,000	5,378	38,020	116,602
5	Design for 6 Courtrooms	260,000				
6	Construction and Equipment	3,000,000	1,222,714	*a		1,222,714
	Jury Assembly Construction cost	500,000	500,000			500,000
7	6th Floor Architectural/Project Management - Grannary	100,000	426,641		100,628	326,013
8	Enhanced technology ( ALT )		550,000	*c		550,000
	6th Floor Construction Cost	2,000,000	2,000,000			2,000,000
9	Network Maintenance	1,000,000	1,000,000	253,831	112,275	633,893
	Internet Expansion/Firewall	500,000	500,000			500,000
10a	Municipal Court Automation Project and E-filing Project	2,000,000	764,000	325,000	994	438,006
10b	Mental Health Automation Project		50,000			50,000
	Trial Division E-filing System	1,000,000	607,455	*b		607,455
	Trial Division Criminal Adult Probation & Parole Automation Project	1,200,000	1,200,000			1,200,000
	Trial Division/Municipal Court Criminal Automation Project	3,000,000				
11a	CA Phase I		169,400	169,400		-
11b	CA Phase II		992,400	684,584	296,817	10,999
11c	Software cost over 5 year period		739,269		563,127	176,142
11d	Training/Manuals		174,000			174,000
11e	Travel & Lodging		208,860	106,152		102,708
	Jury Management Application Modifications	200,000	200,000			200,000
12	Jury Management Review Consultation	50,000	50,000			50,000
	Notes of Testimony Archiving/Transmission Technology	200,000	200,000			200,000
13	Training Fund	250,000	268,529	140,890	127,639	-
	Telephone Upgrade Projects :					
14a	FJD City Hall/DR Telephone Upgrade Project	1,500,000	1,315,348	1,074,505	240,843	-
14b	FJD Traffic Court Telephone Upgrade Project	200,000	140,981		108,216	32,765
14c	FJD Municipal Court Telephone Upgrade Project	200,000	163,061		116,323	46,738
15	City Hall Courtroom Acoustics	100,000	100,000	23,292	4,871	71,838
16	FJD City Hall Facilities Renovation (ongoing)	1,000,000	1,000,000	325,512	140,203	534,286
17	FY2001 Rental Space Contingency Fund	1,777,335	1,857,371	1,077,335	780,036	-
18	Legal fees and indemnification Fund	1,000,000	1,178,313	607,642	570,671	-
19	Video Conferencing	641,752	641,752	385,051	207,645	49,056
20	Bank Fees	13,562	13,562	13,562		-
21	Interest Reimbursement	100,967	226,318	100,967	125,351	-
22	Defibrulators	92,572	92,572	92,572		-
23	Community Court Project		200,779		200,779	-
24	Jury Consulting Services		28,287		28,287	-
25	1801 Vine Building Construction		12,980		12,980	-
	FBI Pre-Trial Overtime offset & Other		(6,929)		(6,929)	-
	Freight	3,000	3,000			3,000
	<b>TOTALS</b>	<b>\$ 32,989,188</b>	<b>\$ 29,060,497</b>	<b>\$ 6,260,469</b>	<b>\$ 5,195,399</b>	<b>\$ 17,604,630</b>

New items in 2nd quarter Court Improvements - not on Original Budget

Items with contracted amount, remaining figures are Original Projected Budget

\$ 16,485,716 57%

\*a See ALT proposal for explanation

\*b 6 proposals received between \$143K and \$1.6M (average is \$ 607+K)

\*c See ALT proposal for explanation

Court Improvement Account Balance (12/31/01)	\$ 7,249,839	\$ 29,060,497
FY01 Class 100 & 200 Savings (to be rec'd Feb.02)	7,591,696	11,455,868
Anticipated Balance as of Feb.02	\$ 14,841,535	\$ 17,604,630

Total Project Budget (Gross)

Less : Actual Expenses

Gross Revenue required for completion

Less: Projected Expenditures @ 6/30/02	10,200,000
Plus: Projected FJD Year End Savings for FY02 @ 12/31/01	6,887,550
Anticipated Available Revenues as of 2/1/03	\$ 11,529,085

## Summary of Findings and Recommendations

### Trial Court Performance Standards

#### Area 1: Access to Justice

##### **Public Proceedings**

*Standard:* The trial court conducts its proceedings and other public business openly.

*Finding:* The Domestic Relations Division of Philadelphia Family Court does not completely open its proceedings to the public, but permits only limited categories and numbers of persons into the courthouse and courtrooms.

##### **Safety, Accessibility, and Convenience**

*Standard:* Trial court facilities are safe, accessible, and convenient to use.

*Finding:* The building that houses the Domestic Relations Division of Philadelphia Family Court has inadequate security and is difficult to access and navigate.

##### **Effective Participation**

*Standard:* The trial court gives all who appear before it the opportunity to participate effectively, without undue hardship or inconvenience.

*Finding:* Insufficient information and assistance provided to pro se litigants, fragmented hearings, multiple scheduling of cases, long waits, extremely short hearings, lack of language interpreters, and inadequate child care create undue hardships and inconveniences for many litigants.

##### **Courtesy, Responsiveness, and Respect**

*Standard:* Judges and other trial court personnel are courteous and responsive to the public and accord respect to all with whom they come in contact.

*Finding:* While the judges and court personnel are courteous most of the time, there appear to be serious instances of disrespectful treatment of litigants by judges and court staff.

##### **Affordable Costs of Access**

*Standard:* The costs of access to the trial court's proceedings and records—whether measured in terms of money, time or the procedures that must be followed—are reasonable, fair, and affordable.

*Finding:* Domestic relations litigation is costly in terms of fees, third party expenses, and legal representation. Current free legal services, pro bono services, and fee waiver procedures are insufficient to ameliorate the need.

## **Trial Court Performance Standards**

### **Area 2: Expedition and Timeliness**

#### **Case Processing**

*Standard:* The trial court establishes and complies with recognized guidelines for timely case processing while, at the same time, keeping current with its incoming caseload.

*Finding:* Although the Domestic Relations Division has been working to reduce its backlog and move cases through the system faster, it is not current with its caseload, and data show large backlogs which have increased over time.

## **Trial Court Performance Standards**

### **Area 3: Equality, Fairness, and Integrity**

#### **Fair and Reliable Judicial Process**

*Standard:* Trial court procedures faithfully adhere to relevant laws, procedural rules, and established policies.

*Finding:* The failure to inform and afford litigants of their right to be heard, to apply crucial statutory legal standards, and to adequately publish and disseminate applicable governing procedures deprives litigants of access to justice in the Domestic Relations Division.

#### **Court Decisions and Actions**

*Standard:* Trial courts give individual attention to cases, deciding them without undue disparity among like cases and upon legally relevant factors.

*Finding:* The lack of certainty, orderliness, and regularity in proceedings in the Domestic Relations Division relative to other legal proceedings, coupled with the prevalence of women, racial minorities, and low-income people among the litigants suggest bias may be a factor contributing to the inadequacies in the Domestic Relations Division.

#### **Clarity**

*Standard:* The trial court renders decisions that unambiguously address the issues presented to it and clearly indicate how compliance can be achieved.

*Finding:* Limited data suggests that improving the clarity of custody orders will improve a petitioner's ability to enforce a custody order.

#### **Responsibility for Enforcement**

*Standard:* The trial court takes appropriate responsibility for enforcement of its orders.

*Finding:* Information suggests the need for expedited judicial enforcement procedures.

**Trial Court Performance Standards**  
**Area 4: Independence and Accountability**

**Accountability for Public Resources**

*Standard:* The trial court responsibly seeks, uses, and accounts for its public resources.

*Finding:* The FJDP fails to seek and allocate sufficient funding, personnel, and other resources for the Domestic Relations Division to improve access to justice in essential ways such as: (1) upgrading the physical structure; (2) increasing security; (3) developing materials and deploying staff to provide litigants with meaningful information and assistance; and (4) increasing personnel to expedite case processing and afford litigants a full and fair opportunity to present their cases. Nor does the FJDP make public any meaningful accounting of its use of resources.

**Public Education**

*Standard:* The trial court informs the community about its programs.

*Finding:* The Domestic Relations Division of Family Court is engaged in no public education.

**Trial Court Performance Standards**  
**Area 5: Public Trust and Confidence Accessibility**

**Accessibility**

**Expeditious, Fair, and Reliable Court Functions**

*Standard:* The public perceives the trial court and the justice it delivers as accessible. The public has trust and confidence that basic trial court functions are conducted expeditiously and fairly and that court decisions have integrity.

*Finding:* Some litigants fear they will not be treated justly or obtain just results in Domestic Relations Division proceedings.

# Women's Law Project

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