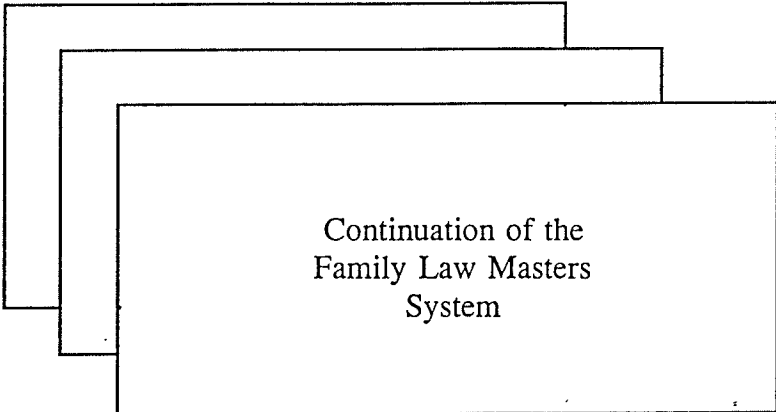


STATE OF WEST VIRGINIA

UPDATE OF THE

FAMILY LAW MASTERS SYSTEM



Continuation of the
Family Law Masters
System

OFFICE OF LEGISLATIVE AUDITOR
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Antonio E. Jones, Ph.D.
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January 6, 1995

The Honorable A. Keith Wagner
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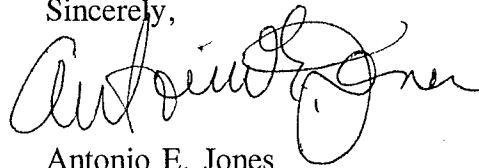
The Honorable Joe Martin
House of Delegates
Building 1, Room 213E
1900 Kanawha Blvd. East
Charleston, West Virginia 25305

Gentlemen:

This is an update on the 1991 Performance Audit of the Family Law Masters System, which we will report to the Joint Committee on Government Operations on Sunday, January 8, 1995. The issue covered herein is the "Continuation of the Family Law Masters System."

Let us know if you have questions.

Sincerely,



Antonio E. Jones

AEJ/wsc

Enclosure

Appendix A

RECOMMENDATIONS ACTED UPON BY THE SUPREME COURT

RECOMMENDATION: The Supreme Court should adopt uniform rules of Practice for the Family Law Master System.

COMPLIANCE: The Supreme Court adopted the Rules of Practice and Procedure for Family Law which became effective October 1, 1994. "These rules shall govern the procedures in proceedings before family law masters and circuit judges pursuant to Chapters 48 and 48A of the Code of West Virginia and in habeas corpus proceedings involving issues of child custody instituted pursuant to Chapter 53, Article 4, Section 1 et seq. of the Code of West Virginia."

RECOMMENDATION: The Supreme Court should consider setting specific time-based performance objectives for Family Law Masters tied to court goals for case processing.

COMPLIANCE: In 1995, the first reports on each Circuit's compliance with the Rules on Time Standards for Circuit Courts will be released. These reports will include figures on the disposition rate for domestic relations cases which will reflect how Family Law Masters are managing their caseloads. This data will reveal which Circuits have fallen behind and will receive follow-up action from the Supreme Court Administrative Office.

RECOMMENDATION: Family Law Masters should receive more directed training in domestic relations law, federal IV-D requirements and court management (case flow) principles.

COMPLIANCE: To prepare newly appointed Family Law Masters to serve in this capacity effective July 1, 1994, a seven day seminar was held in Charleston in June. Experienced Family Law Masters who were reappointed were given four days of training. This seminar which provided the most extensive training ever provided Family law Masters, covered in depth family law, IV-D cases and case management. The new Masters reconvened November 4th and 5th at Flatwoods for a follow-up seminar, and Family Law Master Assistants came to Charleston for a three day seminar. Copies of the program agendas are available upon request.

RECOMMENDATION: Uniformity is needed in the way Circuit Clerks serve pro se litigants. Standardized pro se packets would help.

COMPLIANCE: The Supreme Court has adopted uniform Disclosure Forms for child support, alimony and property distribution and a pro se packet for modification of child support. The Court is now reviewing proposed pro se divorce and answer packets that were released in September for public comment. All of the forms promulgated by the Court are provided to

Circuit Clerk Offices for distribution to the public.

RECOMMENDATION: Family Law Master forms and documents should be standardized and Masters should generate their own orders.

COMPLIANCE: The OSCAR child support computer system has form pleadings and orders for use by the Child Advocate Office and Family Law Masters. The order paragraphs cannot be modified to cover diverse fact situations and it is difficult to add text to the orders. Hopefully, the forms will be modified so they will be more useful to Family Law Masters and Judges. If these form orders are applicable, Family Law Masters can print them out only in their home offices where their Assistants' computers are wired into OSCAR. Masters cannot print orders from OSCAR for cases heard in their satellite counties.

RECOMMENDATION: The Supreme Court should adopt a case flow management process for Family Law Masters to ensure that cases are resolved expeditiously.

COMPLIANCE: At their training seminar in June 1994, Family Law Masters received a full day of instruction on case management principles and models from Maureen Solomon, a nationally recognized case management expert. In addition, experienced Masters described management practices that have helped in their Regions. Rule 6 of The Rules on Time Standards for Circuit Courts set forth the length of time for completion of different types of domestic relations proceedings, and various provisions in §48A-4 et seq. define when certain procedures must be completed by Family Law Masters and Judges to finalize a case.

A case tracking program was developed for Family Law Masters on OSCAR. The Family Law Master Assistants input basic information on each case and then list the next event and the date due. The program will run reports which list all scheduled events due on a day, week, etc., and a report listing past due events for any defined time period. Through equipment that will be installed in the Supreme Court Administrative Office, the Director for Family Law Masters will be able to review pending caseloads for Masters throughout the state. With this information, Regions with case backlogs can be identified so that the Administrative Office can assist in improving their case management practices.

RECOMMENDATION: The Child Advocate Office and the Family Law Master program should examine opportunities to increase IV-D time before Masters.

COMPLIANCE: Universal wage withholding is required in virtually all child support orders entered after January 1, 1994 and all such cases are counted as IV-D cases. Since these provisions have been implemented, the amount of Family Law Master time spent on IV-D cases has risen dramatically. The percentage of IV-D time has increased from 21.9% in the last quarter of 1993 to 39.8% in the third quarter of 1994. It is anticipated that this trend should continue.

RECOMMENDATION: The Administrative Office of the Supreme Court should train Family Law Masters on federal IV-D policy and rules for orders.

COMPLIANCE: Family Law Masters received a great deal of training in IV-D policy and procedures at the week long seminar held in June 1994.

RECOMMENDATION: Judges and Family Law Masters communicate regarding the final disposition of recommended orders. Judges should ensure that recommended orders are entered expeditiously. A reasonable standard would be three days after the end of period for exception.

COMPLIANCE: In most Circuits, domestic relations orders are entered within a reasonable time period. Any Circuit that has failed to dispose of their docket will be out of compliance with the Time Standards for Domestic Relations Proceedings when the report is issued this year. The Administrative Office staff will target those Circuits and work to correct the problem.

RECOMMENDATION: The Supreme Court Administrative Office should improve the fee collection process to ensure prompt collection of fees.

COMPLIANCE: The Legislature in 1933, amended §59-2-1 to establish a method for determining which parties should be excused from paying court costs because of financial incapacity. Prior to this time, because requests for pauper's status were automatically granted there was abuse of this procedure. With a new form in place which requires applicants to disclose their financial circumstances, only qualified parties will have their costs waived. Any effort to increase the collection of fees and costs should be tempered by a concern that parties not be unfairly denied access to the courts.

RECOMMENDATION: To increase federal funding, Family Law Master Program should renegotiate its cost allocation plan with the federal agency, identify IV-D cases at the hearing and participate in the design of OSCAR.

COMPLIANCE: In January 1995, the Family Law Master time logs, which form the basis for the federal reimbursement, will be maintained on OSCAR through a new module just developed by the OSCAR programmer who designed the Family Law Master Case Tracking screens. It will be possible to determine promptly whether a case has been appropriately designated as IV-D by the Master. If there is a disagreement about the status of a case, the case can be tracked immediately. The statewide IV-D statistics will be available to the Supreme Court Administrative Office through OSCAR and not months later. This information will permit the Administrative Office to scan statewide IV-D performance and more accurately predict future IV-D revenues.

RECOMMENDATION: Family Law Masters should stop charging the Child Advocate

Office for hearings as a matter of policy, since Family Law Masters receive federal financial reimbursement for this time.

COMPLIANCE: Following the publication of this audit report, Family Law Masters stopped charging hearing fees for Child Advocate Office cases.

RECOMMENDATION: The FACTS (Case Tracking) System should be modified to make the system more user-friendly and less time-consuming to run, and the Courts and Family Law Masters should fully participate in the design of OSCAR.

COMPLIANCE: The FACTS program was never fully implemented because of these difficulties, the cost of re-programming and the fact that the OSCAR System which was being started would supplant FACTS. The Family Law Master Program participated in development of OSCAR's Family Law Master time study program.

Appendix B

STATUTORY RECOMMENDATIONS IMPLEMENTED BY THE LEGISLATURE

RECOMMENDATION: Amend §48-2-33 to clarify that a court order is not needed for a person to respond to a request for discovery.

COMPLIANCE: This section has been amended several times since 1991, and now requires in divorce and actions involving child support that full disclosure be made within forty days after service of summons or earlier time ordered by the court. As required in this section, effective March 1, 1994, the Supreme Court promulgated uniform disclosure forms for distribution to the public through the offices of Circuit Court Clerks. In addition, the Supreme Court adopted the Rules of Practice and Procedure for Family Law effective October 1, 1993, which specifically set forth in Rule 11, the information and time periods required for disclosure. An order is still needed if formal discovery pursuant to the West Virginia Rules of Civil Procedure is requested.

RECOMMENDATION: West Virginia should continue to fund the Family Law Master System as a component of the West Virginia Judiciary.

COMPLIANCE: The Legislature has continued to fund and improve the program. In 1993, the program was reorganized and four additional Master positions were authorized to be filled in 1994. In addition, the Masters' budget was transferred from the Department of Health and Human Resources with personal services and fringe benefits being added to the Supreme Court's budget and current expenses being placed in the Auditor's office.

RECOMMENDATION: Existing subject matter jurisdiction for Family Law Masters should be maintained with limited contempt powers added.

COMPLIANCE: Subject matter jurisdiction has been maintained and increased with the addition of habeas corpus actions involving custody and actions brought pursuant to the uniform child custody jurisdiction act, but all contempt actions are still brought before the circuit court.

RECOMMENDATION: Family Law Master regions should be realigned along Judicial Circuit lines and in keeping with proposed "Super Regions" in which two or three Masters would serve combined Judicial Circuits.

COMPLIANCE: In 1993, the Legislature enacted §48A-4-4 directing the Supreme Court to "apportion the state into geographical regions which may be single-master or multi-master regions, or a combination of both." This section mandated that the reorganization equalize caseload taking into consideration judicial circuits, geography that affects travel, traditional

practice patterns of the bar, and population. The Supreme Court appointed a committee to research these elements and recommend a new alignment to the Court. The final regional map adopted by the Supreme Court with an effective date of July 1, 1994, appears in Rule 47 of the Rules of Practice and Procedure for Family Law.

RECOMMENDATION: Family Law Masters should be appointed as full-time quasi-judicial officers who cannot practice law.

COMPLIANCE: In the 1993 amendments which authorized four additional master positions, the Legislature classified the positions to be filled by the Governor on July 1, 1994 for the next four year term as fourteen full-time and twelve part-time.

RECOMMENDATION: Family Law Masters should be compensated at a set percentage of judicial salaries with a recommendation that full-time Masters receive 75% of judicial compensation.

COMPLIANCE: In 1993, the Legislature enacted §48A-4-3 which states that after July 1, 1994, the annual salary for full-time Masters shall be \$50,000 and for part-time Masters shall be \$37,500. On January 1, 1995, the annual salary was raised to \$80,000 for Circuit Judges and \$85,000 for Supreme Court Justices.

RECOMMENDATION: Family Law Master appointment authority should be moved to the Supreme Court and Masters should not be appointed for a term of years but rather should be retained based solely on merit.

COMPLIANCE: As part of the 1993 reorganization of the Family Law Master Program, the Legislature elected to continue both the appointment authority with the Governor's office and the appointment of Family Law Masters for four year terms.

RECOMMENDATION: The Family Law Masters budget should reside with the Supreme Court with the budget process structured to encourage improved court fiscal management. Funds should be appropriated for compensation of the Family Law Masters and Director. All other personnel and current expenses should come from a fund consisting of federal reimbursements and fees. As the fund increased, Family Law Masters would have additional dollars to spend on the program.

COMPLIANCE: The 1993 reorganization of the Family Law Master Program placed the budget for personal services and fringe benefits for all Family Law Master staff in the Supreme Court's budget. All administrative expenses for the program are paid out of the Family Law Master Fund which is a special fund administered by the State Auditor and funded by line item appropriation from the Legislature. Family Law Master hearing fees collected by Circuit Clerks, and federal

matching funds for the Masters' IV-D time are applied to the Program's personal services expense.

Appendix C.

STATUTORY RECOMMENDATIONS NOT IMPLEMENTED BY THE LEGISLATURE

RECOMMENDATION: **"Income definition"**

This provision has not been adopted by the Legislature; the child support formula is now being reviewed by a committee who will recommend revisions to the Joint Rule-Making Review Committee in 1996.

RECOMMENDATION: **Temporary child support should be set within 30 days after case is filed.**

This provision has not been adopted by the Legislature. Additional staff and resources would be needed to meet this goal in every case. We are now developing a form order for temporary support which will be entered by Masters at the conclusion of a temporary hearing. Use of this form will speed up entry of temporary orders by eliminating the time now needed to prepare an order, serve it on the opposing counsel and have it reviewed and signed by the Master.

RECOMMENDATION: **Temporary child support should be set within 30 days of the submission of a verified report of genetic test results showing a probability of paternity of 99% or more.**

This provision has not been adopted by the Legislature.

RECOMMENDATION: **The Legislature should reconsider whether payment to third parties in lieu of child support should be permitted.**

This provision has not been adopted by the Legislature.

RECOMMENDATION: **West Virginia should consider setting arrearage in income withholding orders as a percentage of the current support amount, and review whether §48A-5-3(e)(6) complies with the federal Consumer Credit Protection Act.**

These provisions have not been adopted by the Legislature.

RECOMMENDATION: **West Virginia should adopt real property lien provisions that allow the lien to be automatically set in the amount of the actual child support judgment amount.**

This provision has not been adopted by the Legislature.

RECOMMENDATION: The Legislature should consider creating specific personal property lien mechanisms and a central statewide lien registry, so that liens would have statewide effect.

This provision has not been adopted by the Legislature.

RECOMMENDATION: The Legislature should enact a civil contempt law that does not include incarceration, so that Family Law Masters could hear motions for civil contempt to enforce child support orders and impose a variety of purgation requirements short of imprisonment.

This provision has not been adopted by the Legislature.

RECOMMENDATION: West Virginia should enact professional and occupational license denial or suspension as an additional enforcement remedy.

This provision has not been adopted by the Legislature.

RECOMMENDATION: Even if West Virginia elects to retain the Melson formula, at a minimum, the state should streamline the existing guidelines.

There has been no revision of West Virginia's child support formula since 1991, but a committee setup by the Child Advocate Office will be making recommendations to the Legislature in 1995.

RECOMMENDATION: Like the Circuit Court, Family Law Masters should be accorded full support from court personnel including circuit clerks and accommodations should be provided Masters without cost.

These provisions have not been adopted by the Legislature.

RECOMMENDATION: Procedures need to be strengthened to ensure that service of process has been successful prior to scheduling cases for hearing before Family Law Masters.

This provision has not been adopted by the Legislature. While this may be a desirable goal, many attorneys, because of crowded dockets, want to schedule cases as soon as they are filed. To utilize all of their hearing time and to allow for cases that may fall through, including for the reason that service has not been accomplished, many Family Law Masters overbook their dockets. If a case has been scheduled and an attorney finds that service will not be accomplished in time for the hearing, under Rule 12 of the Rules of Practice and Procedure for Family Law, a written motion for continuance must be filed not less than seven days before the hearing.