STATE OF WEST VIRGINIA

PRELIMINARY PERFORMANCE REVIEW OF THE

Supreme Court of Appeals
FAMILY LAW MASTER SYSTEM

Time Standard Compliance in Divorce and Domestic Relations Averages 56 Percent

Lack of Statewide Management Information System

Child Support Software Developed But Not Used

Perspectives on Uniformity and Structural Issues: A Survey of Family Law Masters

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OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex

CHARLESTON, WEST VIRGINIA 25305
(304) 347-4890

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Introduction and Background

The Family Law Master system was created to administer the Title IV-D (Social Security Act) child support enforcement program in conformance with the U.S. Congress' 1984 Child Support Enforcement Amendments, P.L. 98-378, which required states to use *expedited judicial or administrative processes* for obtaining and enforcing support orders. Expedited processes could also be created for establishing paternity. In West Virginia, parental support payments are enforced by the Bureau of Child Support Enforcement within the Department of Health and Human Services (DHHR). After such orders are recommended by Family Law Masters and signed by a circuit judge.

The Child Support Enforcement Amendments of 1984 were passed at least in part because the U.S. Congress was dissatisfied by delays in the establishment and enforcement of child support orders within traditional court systems. The U. S. Congress stated:

> The growing volume of child support cases, when added to the increased use of courts in general to resolve disputes, has resulted in clogged dockets and lengthy delays in litigating child support cases. In an informal survey of state Titled IV-D offices, backlogs of three months were routinely reported, and several states reported delays of six months, particularly in large cities. Should a case need to be rescheduled, as is frequently the case, the wait to be docketed must be repeated. Usually, in the meantime, no court order has been established.[1]

Federal regulation 45 CFR 303.101(a) defines expedited processes as **"...administrative or expedited judicial processes or both which increase effectiveness and meet processing specified in...this section and under which the presiding officer is not a judge of the court."** Thus, by regulatory definition, judges are excluded from presiding over IV-D child support hearings in order for states to comply with the expedited process requirements. However, the 1994 Child Support Enforcement Amendments did not intend to limit the authority or jurisdiction of state courts. The Health and Human Services administration permits states to apply for exemptions from the expatiating the child support enforcement process:(1) an expedited judicial process where judges decided child support issues;(2) quasi-judicial processes where hearing officers hear the cases;(3) administrative processes where executive agencies have authority to establish and enforce child support orders.

In 1986, West Virginia's federally mandated IV-D program was being administered by the states Office of Child Support Enforcement. All domestic relation matters where handled within the Circuit Courts of West Virginia and overwhelmingly by the states local district attorneys. The states appointed Divorce Commissioners were appointed to hear cases of marital dissolution and to make recommendations concerning issues of support, custody, and distribution of marital assets. With the

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[1]U.S. House of Representatives, Child Support Enforcement Amendments of 1983: Report to Accompany H.R. 4325, Report No. 98-527, Committee on Ways and Means, (November 10, 1983), p35.

passage of the ***Family Obligations Act, which created the Family Law Masters,*** the West Virginia Legislature enacted sweeping reform of its domestic relations laws. The Family Obligations Act created the Child Advocate Office and the Family Law Masters System. As a result, the state's IV-D program gained the services of in house attorneys (child advocates) to litigate child support matters before the court. Simultaneously, attorneys where established as hearing officers, in lieu of judges, to hear IV-D cases, which would further the goal of expeditiously processing the cases through the legal system. In essence, the Legislature, through the Family Law Masters System, established a separate forum or court for hearing domestic relations matters. Initially, they believed the Family Law System would be self-supporting due to the fee structure established in statute [W.Va. Code §48A-4-1(k)]. However, at the time, given the scope of the FLMM's jurisdiction, IV-D matters consumed a relatively small portion (20-25 percent) of their workload. Prior to the implementation of the FLMM System, the question of whether Law Masters could have original jurisdiction in divorce and other domestic matters was addressed in *Starcher v. Crabtree* (348 S.E.2d293). The West Virginia Supreme Court affirmed that the state constitution bestows upon the Circuit Courts alone jurisdiction of divorce and other domestic relations matters. Therefore, FLMM's decision-making authority was limited.

Three additional difficulties plagued the FLM System: (1) the West Virginia Supreme Court had no administrative structure for managing the hearing officers; (2) confusion resulted concerning management roles of the West Virginia Supreme Court and the Child Advocates Office over the **FLM** since their budget was held within DHHR; (3) Some Circuit Court judges were unreceptive because they disliked relinquishing their jurisdiction in the domestic relations area or preferred using appointed Divorce Commissioners. In 1987, The W.Va. Code §51-1-19 created the position of Assistant Director for Family Law Masters within the Supreme Court of Appeals in an attempt to remedy the initial shortcoming of the FLM System.

The Family Law Master System

West Virginia **Code** §48A-4-2 deems all FLMs and their staff officers or employees of the judicial branch of government. Family Law Masters are appointed by the Governor for four year terms and must be members of the state bar in good standing. According to W.Va. Code §48A-4-3, a full-time FLM is compensated fifty thousand dollars a year and a part-time master receives an annual compensation of thirty-seven thousand dollars. West Virginia Code §48A-4-4a states that there shall be a total of twenty-six family law masters, not more than fourteen of whom shall be full-time masters. ***However, §48A-4-4a provides that from the time period extending from the first day of August, one thousand nine-hundred ninety-six, until the thirtieth day of June, one thousand nine-hundred ninety-nine, there shall temporarily be a total of twenty-seven family law masters,*** not more than fourteen of whom shall be full-time masters, to serve throughout the state, and the additional part-time position of family law master created by this subsection shall be assigned to the region that includes Marshall County. The assignment of FLMs to geographical regions are listed in the Table 1 below.

Table 1
Family Law Master Regions

Regions	Number of Full-Time	Number of Part-Time	Counties
Region 1	2	1	Marshall, Tyler, Wetzel, Ohio, Brooke, Hancock
Region 2	1	1	Wood, Pleasants, Ritchie, Doddridge Writ
Region 3	0	1	Roane, Jackson, Calhoun
Region 4	1	0	Mason, Putnam
Region 5	0	3	Kanawha
Region 6	1	1	Cabell, Wayne
Region 7	1	1	Logan, Mingo, Lincoln, Boone
Region 8	1	1	McDowell, Mercer, Summers
Region 9	2	0	Raleigh, Wyoming, Fayette
Region 10	0	1	Greenbrier, Monroe, Pocahontas
Region 11	1	0	Webster, Clay, Gilmer, Braxton Nicholas
Region 12	1	0	Randolph, Lewis, Tucker, Upshur
Region 13	0	1	Harrison
Region 14	1	0	Marion, Taylor, Barbour
Region 15	1	0	Monongalia, Preston
Region 16	0	1	Hampshire, Grant, Hardy, Mineral, Pendleton
Region 17	1	1	Berkeley, Jefferson, Morgan

ISSUE AREA 1: Family Law Masters are in Compliance with the Time Standards for Divorce and other Domestic Relations 56% of the Time

The Supreme Court measures compliance with time standards by monthly calculating the total pending cases in specific categories within civil and criminal areas. The specific standard of time e.g., 6 months in the case of divorce is applied to the total pending cases to derive a dichotomy "younger" or "older" than the standard. Compliance is the percent of total cases in compliance.

The underlying legal basis for Supreme Court Time Standard Rule 6 follows.

The West Virginia *Constitution*, Article III, Section 17 states:

"Justice shall be administered without sale, denial or delay"

Promptness is also required in Canon 3B(8) of the *Code of Judicial Conduct* and, the American Bar Association makes it clear in Section 2.5 of its *Standards Relating to Court Delay Reduction* that:

> the court, not the lawyers or litigants should control the pace of litigation

The West Virginia Supreme Court of Appeals recognizes all these references when it further states in Rule 1 of Rules on Time Standards for circuit courts:

> Pursuant to these guidelines, the Supreme Court of Appeals has determined that the expedition processing and timely disposition of cases by circuit courts are essential to the proper administration of justice.

Rule 6 of the Rules on Time Standards for circuit courts provides a 6 month time standard for divorce decrees, and a 9 month time standard for other domestic relation cases.

Compliance data in the form of "case age reports" are sent to the Supreme Court administrative offices where it is compiled and summarized. Compliance is measured by a percentage of pending cases in a category which are younger than the standard; therefore, still in compliance. Conversely, the cases older than the standard constitute a backlog.

Table 2 reports compliance rates for divorce and other domestic relations cases for calendar year 1998. The data is organized by 17 Family Law Master regions; it is important to understand that county data were resorted by regions. Law masters work within the confines of circuit judges, and therefore, may be reporting to more that one circuit judge. Therefore, compliance data must be viewed in the context of a system, not totally related to the specific behavior of law masters.

Each month the total pending case are reviewed for age in relation to the Time Standard. Table 2 shows the cases pending at the end of 1998, thus extremely aged cases would be reflected in the law compliance rate reported in the last column.

Table 2
Pending Case Age For Divorce and Other Domestic Relations Cases *
Calendar Year 1998

FLM Region	Total Cases Pending		Number in Compliance	Percent Compliance
1	Divorce	907	402	44
	Other Domestic	643	283	44
2	Divorce	487	265	54
	Other Domestic	291	139	48
3	Divorce	120	73	61
	Other Domestic	66	39	59
4	Divorce	475	232	49
	Other Domestic	219	100	45
5	Divorce	1067	480	45
	Other Domestic	1556	651	42
6	Divorce	581	401	69
	Other Domestic	549	346	63
7	Divorce	982	540	55
	Other Domestic	900	655	73
8	Divorce	540	301	56
	Other Domestic	671	349	52
9	Divorce	700	327	47
	Other Domestic	263	146	56
10	Divorce	78	41	53
	Other Domestic	184	86	46
11	Divorce	237	147	62
	Other Domestic	149	96	64
12	Divorce	260	178	68
	Other Domestic	179	117	65
13	Divorce	338	178	54
	Other Domestic	198	137	69
14	Divorce	377	292	77
	Other Domestic	263	163	62
15	Divorce	375	187	50
	Other Domestic	204	95	47
16	Divorce	259	126	49
	Other Domestic	167	107	64
17	Divorce	493	331	67
	Other Domestic	322	205	63

* Missing Data for October in Mason County; December in Greenbrier and Webster Counties

Considering the lowest compliance those regions in which both divorce and other domestic relations are less than fifty percent, Region 1, with 49 percent in both categories; Region 4 with 49 and 45 percent respectively; and, Region 5 with 45 and 42 percent respectively. Region 1 is comprised of the northern panhandle; Region 4 is Putnam and Mason Counties; Region 5 is Kanawha County.

The highest compliance was found in Region 14 (Marion, Taylor, Barbour) with 77 percent in divorce and 62 percent in other domestic relations. Logan, Lincoln, Mingo and Boone (Region 7) had 77 percent younger cases in other domestic relations, but 55 percent in divorce proceedings.

The average compliance of 56 percent for all domestic relations cases certainly has an adverse impact on citizens of the state. The emotional trauma associated with these cases effects families in many ways, which then impact children in school, juvenile delinquency, productivity in the workplace and thus stability. Delays in the court system should be minimized as a matter of judicial principle as well as social impact.

The Commission on the Future of the West Virginia Judiciary adopted three principles for excellence in judicial administration. One of these criteria was "Expedition and Timeliness":

> Ensuing that cases are processed in a timely manner and resolved with finality, that schedules are met, and that changes in laws and procedures are promptly implemented.

One explanation for the low compliance rate in divorce and domestic relation cases certainly can be attributed to the drastic increase in cases in the past eight to ten years. The Final Report of the Commission of the Future of the West Virginia Judiciary described this increase as follows:

> Domestic relation cases on the other hand, increased by a vigorous 47% during the same time period, from 14,582 filings in 1990 to 21,410 in1997(p5)
>
> The Report explained further:
>
> The result is that domestic cases, which were one-third of the civil and one-quarter of the total caseload in 1990, are now 43% of the civil and 33% of the total caseload statewide.

The Commission concluded was that the increase in volume and complexity of the family law master system is clearly taxing the family law master system and is a factor in a rising sense of litigation dissatisfaction with performance in this area.

ISSUE AREA 2: Supreme Court can not use Case Management Part of Child Support Computer System OSCAR for Statewide Management Because of Variation in its use by Family Law Masters

The Family Law Master System was created in 1986 as a result of a federal mandate contained in the Child Support Enforcement Amendments of 1984 (P.L. 98-378). The purpose was to expedite the process of child support through one of two options:

1. An administrative decision structure such as administrative law judges; or

2. A quasi-judicial system in the judicial branch.

The child support orders that would pay for this system through federal reimbursement were orders issued under Title IV, Part D of the Social Security Act. At the state level, the Department of Health and Human Resources, and within it, the Bureau of Child Support Enforcement, (BCSE) is charged with enforcement of orders recommended by Family Law Masters and signed by circuit judges. To keep track of the thousands of cases being enforced, calculating arrearages and making modifications to supports, the BCSE developed a computer system called OSCAR, or *Online Support Collections and Reporting System.*

To connect the source of child support orders with the enforcement agency, the OSCAR contractor created a subsystem called Family Law Masters Case Information (FLMM). The user manual section for FLMM, dated March 5, 1994, states the purpose of this function of OSCAR.

> The FLMM function is provided for Family Law Masters, Family Law Master assistants, and members of the Supreme Court to enter and keep track of cases, both IV-D and Non IV-D, within the OSCAR system.

The FLMM contains 15 screens of information on divorce, child custody and support orders. The data fields cover every conceivable piece of information on cases, from the parties involved including the attorneys, whether the case is pro se, or uses a "child advocate" attorney, the sequence of events in the case process, and the amount of the recommended order.

The FLMM was designed to be beneficial to law masters in the management of their caseloads, and to be used to monitor compliance with time standards and evaluate performance at the state level, i.e., the administrative office of the Supreme Court. However, the system is not useable at the state level, and is only used by some law masters for their own benefit. In a memo to the Legislative Auditor's Office dated October 12, 1998, the Supreme Court's Director of Family Law Masters stated:

> I would very much like to have up-to-date case information from OSCAR, but that is not possible given our current staffing arrangements.

With regard to the variation in use by Family Law Masters, the Director further states:

> The OSCAR case tracking system provides a way for Masters to manage

their caseload and for my office to get an overview of case processing statewide. For this system to work the Masters' Assistants have to load cases into the system and add updates as various events occur such as when hearings are held and orders are due from attorneys. Some of our offices are able to utilize OSCAR as a case management tool, while others complete only the minimum steps of inputting a case upon filling and closing it when the final order is entered.

The cost of determining the exact utilization of OSCAR by law masters would exceed the benefit of evidence that the system is not usable as a statewide management xxxxx in system. To arrive at a proxy measure, the Legislative Auditor obtained the total number of cases by county on which any data was entered for calendar year 1998. The county data was summed by Law Master Region. Graph 1below shows the number of cases by region entered into the OSCAR system in 1998. On its face the graph only shows Region 11 to not use the computer system to any appreciable degree. There were 101 cases entered from Webster County; no cases were entered for Braxton, Nicholas, Gilmer or Clay counties. Similar data is reported in Table 3, which Table 3 provides a breakdown of FLM Regions with counties, cases entered in 1998 and numbers of fill or part-time FLMS.

GRAPH 1

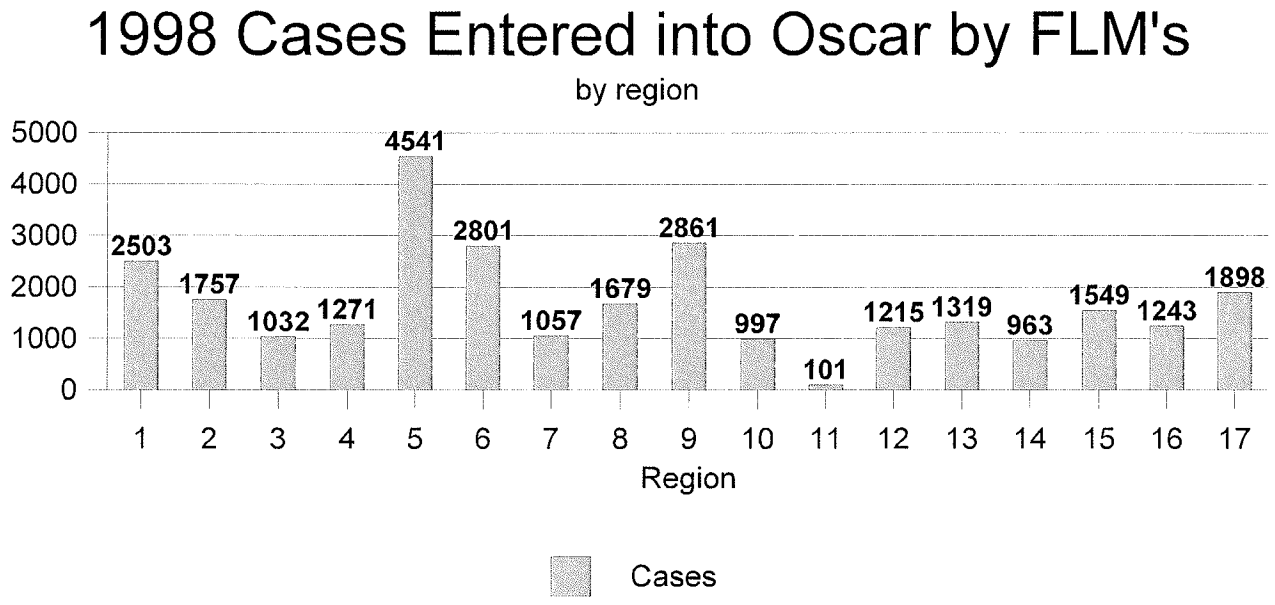


Table 3
Total Cases by Region

Regions	Counties	Cases for Region	Number of Full-Time	Number of Part-Time
Region 1	Marshall, Tyler, Wetzel, Ohio, Brooke, Hancock	2503	2	1
Region 2	Wood, Pleasants, Ritchie, Doddridge Writ	1757	1	1
Region 3	Roane, Jackson, Calhoun	1032	0	1
Region 4	Mason, Putnam	1271	1	0
Region 5	Kanawha	4541	0	3
Region 6	Cabell, Wayne	2801	1	1
Region 7	Logan, Mingo, Lincoln, Boone	1057	1	1
Region 8	McDowell, Mercer, Summers	1679	1	1
Region 9	Raleigh, Wyoming, Fayette	2861	2	0
Region 10	Greenbrier, Monroe, Pocahontas	997	0	1
Region 11	Webster, Clay, Gilmer, Braxton Nicholas	101	1	0
Region 12	Randolph, Lewis, Tucker, Upshur	1215	1	0
Region 13	Harrison	1319	0	1
Region 14	Marion, Taylor, Barbur	963	1	0
Region 15	Monongalia, Preston	1549	1	0
Region 16	Hampshire, Grant, Hardy, Mineral, Pendleton	1243	0	1
Region 17	Berkeley, Jefferson, Morgan	1898	1	1

ISSUE AREA 3: The OSCAR Computer System FLM Time Study Component was Developed at a cost of in 1995, but has never been tested or used

A year after the case management subsystem(FLMM) was developed for use by Family Law Masters, a user manual and software were completed for keeping track of time spent on Title IV-D cases. The purpose of the component according to the manual is as follows:

> This function allows the entry and reporting of time studies for the Family Law Masters and their Assistants. It is also used hy the Office of Audit, Research and Analysis (OARA) workers and Supreme Court workers to view the individual time logs or generate statistical reports for time logs recorded within a given time frame.

The user manual further identifies the ACTIVITY Reporting screen as the only screen available to the law master when using this second OSCAR subsystem called FLMT case information system described in Issue 2. The BCSE's Office of Audits, Research and Analysis and the Supreme Court have access to the Time Study Selection Menu. The FLM Time Study - Activity Reporting Screen is reproduced below as Illustration 1. It would require the entry of Title IV-D hours worked on specific cases and accounting for overtime , including non-worked hours.

The Legislative Auditor does not know how cumbersome the one screen would have been to complete, however, the subsystem was intended to keep efficient time records for Title IV-D reimbursement. It is plausible that due to the already busy schedule of the FLMs, some IV-D time may not be recorded by FLM's thus causing a loss of federal dollars to support the FLMs.

Although the OSCAR computer system was developed under a contract with the Department of Health and Human Resources, according to the Director of the Family Law Master System, the decision not to test or implement the FLMT component was made by the Supreme Court of Appeals. The Director stated that there had already been problems in the previous year getting Family Law Masters and their assistants to use the case management part of the system (FLMM). Because of lack of staff and competing demands on FLMs, the plea by FLM's to not impose further requirements for data entry was accepted. The Legislative Auditor must note that there was only one screen, the *activity reporting screen*, which was required to be completed by FLMs. All other screens were to be used by the State Office of the Family Law Masters System and the Bureau of Child Support Enforcement.

Illustration 1 - FLM Activity Reporting Screen

```
WEOFMTS4          FLM TIME STUDY - ACTIVITY REPORTING          02/21/95 09:44
WE#0036                                                              DEVL
CO: 039        Family Law Master Time Log for Monday 02 20 1995      L21D
          FLM Region: 05      F/P: F    FLM:                LMT4

IV-D CASE TIME                              OTHER WORKED      HOURS
  Civ  Act  Nbr      Cty      Hours  Verif   Misc. IV-D Activities  ---------_____
  ----------------   ----     -------         IV-D Training:         ---------
  ----------------   ----     -------         Non IV-D Activities    ---------
  ----------------   ----     -------         Disallowed Case Time:
  ----------------   ----     -------
  ----------------   ----     -------         NON-WORKED        HOURS
  ----------------   ----     -------         Vacation:              ----------
  ----------------   ----     -------         Sick:                  ----------
  ----------------   ----     -------         Other:                 ----------
                                                      TOTALS
 Total Verified IV-D Case Time:                IV-D Time (ALL):
 Total Unidentified Case Time:                 Non IV-D Time (Worked):
                                               Non-Worked Time:
 Mark (X) here when log is complete: _         Total Time (+Unident):
 Date Completed:                               Command: ----------
Enter-PF1--PF2 ---PF3---PF4 ---PF5---PF6 ---PF7---PF8 ---PF9---PF10 ---PF11---PF12---
      HELP       EXIT        CMD          UP   DOWN                      CANCEL
```

If the above FLMT part of OSCAR had been implemented, Title IV-D hours could have been instantly reported to the BCSE for federal reimbursement. In lieu of the computer system, Family Law Masters must send this information by mail to the Supreme Court where it is tabulated and applied to a total quarterly budget of personal services, current expenses, repairs and alterations, equipment, and employee benefits. Table XXXX provides information on this federal reimbursement process for the last three quarters of FY-98 and the first quarter of FY-99.

Table

Time Covered	Invoice Date	Date Invoice Paid	Invoice Amount	IV-D Time	Federal Match @66%
July, August September, 1998	October 23, 1998	December 14, 1998	$702,341	37.8 %	$175,118
April, May June, 1998	July 8, 1998	July 9, 1998	$702,362	39.3 %	$182,345
January, Feb., March, 1998	June 3, 1998	June 8, 1998	$719,196	40.2 %	$190,698
October, Nov. December 1997	February 26, 1998	March 9, 1998	$702,358	42.1 %	$195,078

This data indicates one quarter in which the tabulation and reimbursement for IV-D activities occurred very timely, while the remainder appear to have delays at various points. Row 1 in the Table shows almost three months to have the invoice prepared and IGT paid; Row 2 shows timely processing. Rows 3 and 4 show a gap in tabulation of hours, but timely processing of the invoice. Variations in processing time of invoices for Title IV-D could impact expenditure flow in operating the Family Law Master System. And, as stated, additional federal funds may result from timely record keeping on IV-D cases. The data already shows a gradual increase in hand tabulations of the time data.

The Commission on the Future of the West Virginia Judiciary envisions greater use of technology in the courts. The Commission's Final Report acknowledges the demands of technology, but also asserts the value of technology in the future of the judiciary. New technology can make a substantial contribution toward improving judicial system accountability, efficiency, and productivity, but it must be embraced, actively used and managed.

ISSUE AREA 4: Perspectives on Uniformity and Structure: A Survey of Family Law Masters

Field work interviews with family law masters and staff at the Supreme Court raised issues concerning structural problem, uniformity of rules and other concerns.

The Performance Evaluation and Research Division conducted a survey of 27 Family Law Masters. The Family Law Masters were asked a series of 14 questions which focused on four areas:

- uniformity of court policies, rules of procedure, and court filing forms (two questions);
- structural problems with the coordination of court services in cases involving families (five questions);
- alternative forms of dispute resolution (two questions); and,
- additional structural or other issues in the family law master system (four questions).

Law masters were asked to respond by indicating the level of agreement with a statement ranging from strongly disagree to strongly agree. Appendix X provides the total number of responses for each question. Eighteen of 27 law masters responded to the survey; however, occasionally a law master opted not to respond to a particular item. Although we report percentages of responses, because of the small number in the survey, we urge caution in interpreting percentages.

Uniformity: There is no uniform set of rules applicable to all circuits in each county for filing divorce and other domestic relation cases.

Table 1 reports the 18 responses to the question of uniformity rules. Because of the negative statement about uniform rules, it is obvious that most law masters believe rules are mostly uniform. One Family Law Master said "*There are uniform Rules of Civil Procedure and Rules of Practice and Procedure for Family Law applicable to all circuits. There could be variances in interpretation among circuits but those should be resolvable by the Supreme Court of Appeals, not the Legislature.*" Another of the Family Law Masters said "*Most circuits, if there are any differences, are minor. I serve three circuits. One requires the filing of a marriage certificate, others do not. That is the only difference I know about.*"

Table 1
Uniform Set of Rules

Response Category	Total Responses	Percentage of Responses
Strongly Disagree	5	28%
Moderate Disagree	2	11%
Disagree	7	39%
Neither	1	6%
Agree	2	11%
Moderately Agree	0	0%
Strongly Agree	1	6%

Uniformity: There is a lack of uniformity when *The Rules of Civil Procedure* are applied across circuits.

The second statement (see Table 2) on uniformity reiterates the belief of uniform rules. The question may have been confusing or redundant since almost a third of the respondents had no feeling either way. One Family Law Master stated "*All rules are subject to interpretation. The differences are not that great.*" Another Family Law Master stated "*I have litigated in several (4) circuits before becoming a FLM and the Rules were strictly applied in all circuits. I also strictly apply the Rules of Civil Procedure in my courtroom.*"

Table 2
Rules Applied Uniformily - Uniformity

Response Category	Total Responses	Percentage of Responses
Strongly Disagree	3	17%
Moderate Disagree	3	17%
Disagree	3	17%
Neither	5	28%
Agree	3	17%
Moderately Agree	0	0%
Strongly Agree	2	11%

Structure: Domestic matters sometimes brought before three judicial officers-magistrates, law masters and circuit court judge-creates problems for FLM's in adjudication of divorce, custody and related matters.

Twelve of eighteen respondents agreed that there are problems associated with having their judicial officers involved in some way in the divorce and child support process. One Family Law Master responded that "*The current three prong approach results in confusing, conflicting orders and unfair results. No one court can effectively evaluate the entire situation.*"

Table 3
Structural Problems in Jurisdictions

Response Category	Total Number of Responses	Percentage of Responses
Strongly Disagree	2	11%
Moderate Disagree	1	6%
Disagree	1	6%
Neither	2	11%
Agree	3	17%
Moderately Agree	2	11%
Strongly Agree	7	39%

Perhaps the strongest comment made concerning this structural issue was the following:

> *There are serious problems with overlapping jurisdiction in cases with domestic violence, abuse and neglect of children in enforcement of orders. The duplication of court time for same issue/incident litigation is expensive to the clients and clogs our courts. People are frustrated and confused about which court to look to for help and amazed by the lack of communication between the courts. For instance, because FLMs do not have contempt power, a person seeking enforcement of a FLM temporary order must motion in before a circuit court judge who knows nothing of the case. That judge will naturally move slowly to allow himself time to become acquainted with the case. Given the delay in getting into courts, it may take months, or even years, to get a judge to enforce the FLM's order. All the while, no support is being paid, marital assets are being sold, stalking or domestic violence may continue unabated. When the parties come back in before the Law Master, we must review the file and question counsel about what is going on in our case.*

Structure: Family Law Masters' decisions are complicated or adversely affected by multiple jurisdictions in cases of child abuse/neglect or other juvenile matters.

Table 6 shows a brief summary of the responses to question 4. There were a total of 17 Family Law Masters who responded to question 4. Table 6 also shows that there were more Family Law Masters who agreed in some form with question 4 than those who disagreed in some form with question 4. This is also evidenced in the average response which was to Agree. One Family Law Master stated that *"anytime an abuse-neglect case is involved, the case is more complicated. This is because the FLM does not have access to the abuse and neglect court file, nor the testimony taken in that case. It really is a duplication of efforts, in most such cases."*

Table 4
Multiple Jurisdictions in Cases of Child Abuse/Neglect - Structural

Response Category	Total Number of Responses	Percentage of Responses
Strongly Disagree	2	11%
Moderate Disagree	1	6%
Disagree	2	11%
Neither	1	6%
Agree	5	28%
Moderately Agree	1	6%
Strongly Agree	5	28%

Another Family Law Master made the following statements addressing issues relating to Child Protective Services in DHHR.:

> *The greater problem in this type of case results from an overburdened Child Protective Services (CPS) unit that refuses to proceed on a case of clear abuse because it is in our court and they expect us to "handle the problem." CPS workers instruct the non-abusing parent to get an order from a FLM which restricts or prohibits visitation, but do not help them with an investigation or testimony in court upon which such an order could be issued. ...This is very frustrating when we have two unfit parents and no ability to remove a child and investigations leave many, many children with abusive and neglectful children, but we have no ability to order an investigation or critique the one that is done.*

Structure: The current protective order process is used inappropriately to gain leverage in divorce proceedings.

There were a total of 18 Family Law Masters who responded to the question of inappropriate use of protective orders. Table 5 also shows that 14 of 18 (77%) respondents agreed that the protective order process was being abused. Family Law Masters who Agreed in some form with question 5 than those who Disagreed in some form with question 5. One Family Law Master stated that *"disgruntled litigants who are displeased with the decision of a FLM routinely seek rulings more to their liking by forum shopping and use of the Emergency Temporary Protective Order (WV Code §48-2A-3b). Persons have literally left*

the FLM office, sought and received Orders contrary to those issued by the FLM. In this regard, the protective order and TEPO provisions of the statute are often used by those seeking exclusive use of a marital home, marital property, etc."

Table 5
Protective Orders Used Inappropriately

Response Category	Total Number of Responses	Percentage of Responses
Strongly Disagree	0	0%
Moderate Disagree	0	0%
Disagree	2	11%
Neither	2	11%
Agree	8	44%
Moderately Agree	2	11%
Strongly Agree	4	22%

Structure: The domestic violence final protective order process should be removed from magistrate courts and placed before Family Law Masters.

Table 6 summarizes the responses to the question of adding domestic violence protective orders to the FLM's role. The responses were not strong in either direction, with 8 agreeing, 6 disagreeing and 2 not having an opinion. There were a total of 17 Family Law Masters who responded to question 6. The average response was Neither. One Family Law Master stated that they would "*agree if all FLMs were full-time and more FLMs were added to the system. I see no way for FLM caseload to be increased in this or any other way.*"

Table 6
Place Domestic Violence Protective Order with FLMs

Response Category	Total Number of Responses	Percentage of Responses
Strongly Disagree	4	24%
Moderate Disagree	0	0%
Disagree	2	12%
Neither	3	18%
Agree	3	18%
Moderately Agree	2	12%
Strongly Agree	3	18%

Structure: Family Law Masters' lack of contempt authority impairs their ability to enforce child support orders.

The lack of contempt authority was a recurring theme in field interviews with law masters. Frustrations concerning keeping order in the "court" were frequently expressed. Some of the physical setting used as "court" were more of a small conference area in the law master's office. Cramped quarters are not conclusive to highly emotional exchanges. If a law master feels the need to issue a contempt order, the master must request that order with justification to the circuit judges. Twelve (70%) of 17 responses agreed in some way, with 6 strongly agreeing that a lack of contempt authority impairs their ability to enforce child support orders. One Family Law Master stated that *"it is often necessary to convince a litigant of the seriousness of non-compliance. Currently, all a FLM can do is say 'I'll make a recommendation on you!' However, before granting such power, FLMs would need training on the use of contempt authority. Power does not create wisdom."*

Table 7
Summary of Responses to Question 7 - Structural 5

Response Category	Total Number of Responses	Percentage of Responses
Strongly Disagree	1	6%
Moderate Disagree	1	6%
Disagree	0	0%
Neither	3	18%
Agree	6	35%
Moderately Agree	0	0%
Strongly Agree	6	35%

Alternative Dispute Resolution: Mediation should be used in appropriate domestic relations cases, or should be mandatory.

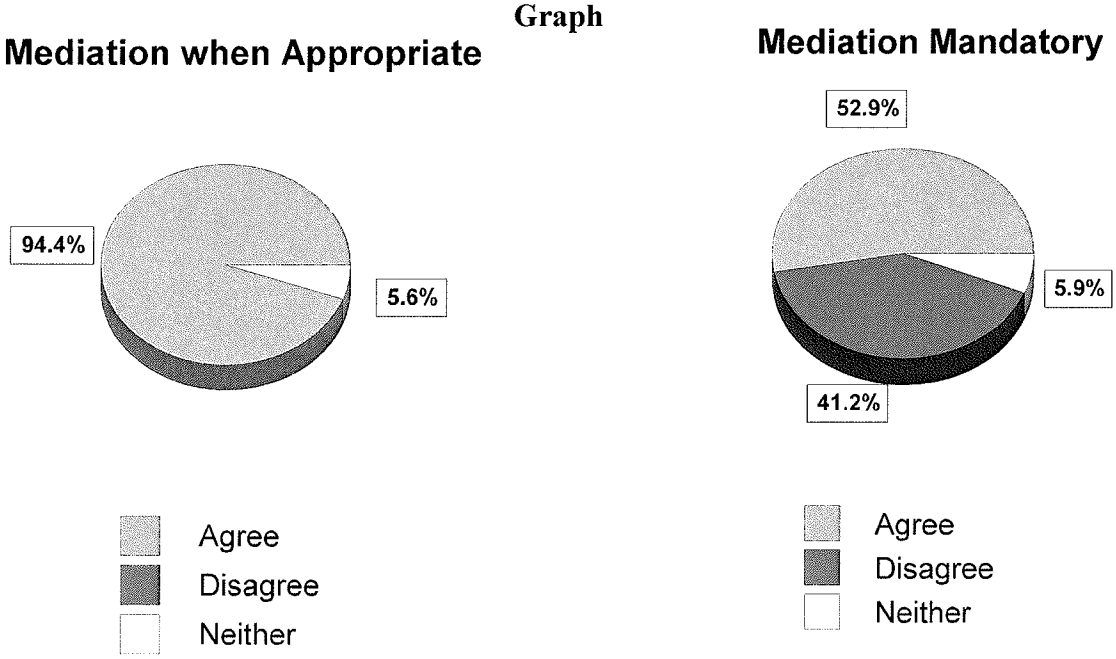
Table 8 summarizes the results of two questions on alternative dispute resolution. As table 8 shows, when asked if mediation should be used in appropriate domestic relation cases, all but one of the 18 respondents agreed. However, the answers were much less unanimous when asked if mediation should be mandatory in domestic relation cases. When asked if mediation should be mandatory, nine agreed while 7 disagreed (Graph). One Family Law Master stated that "*it will not always work, but with an assurance of physical safety mediation could be a powerful tool.*" Another Family Law Master had this to say:

> *A number of cases . . . are not appropriate for mediation. Cases are "screened out" where domestic violence is apparent or for other situations where the parties do not have equal bargaining power. Also, a number of cases are uncontested and do not need mediation.*

Table 8
Alternative Dispute Resolution: When Appropriate or Mandatory

Response Category	Total Number of Responses		Percentage of Responses	
	Appropriate	Mandatory	Question 8	Question 9
Strongly Disagree	0	1	0%	6%
Moderate Disagree	0	2	0%	12%
Disagree	0	4	0%	24%
Neither	1	1	6%	6%
Agree	3	4	17%	24%
Moderately Agree	1	1	6%	6%
Strongly Agree	13	4	72%	24%

Graph



Structure: Is the performance of Family Law Masters impaired because they cover too much geographical territory?

Table 9 shows that geographic territory is a concern of 42%, or 7 respondents. A total of 17 Family Law Masters responded to the question. Table 11 also shows that there were more Family Law Masters who Agreed in some form with question 7 than those who Disagreed in some form with question 7. However, the average response was neither agree nor disagree.

Table 9
Too Much Geographic Territory

Response Category	Total Number of Responses	Percentage of Responses
Strongly Disagree	1	6%
Moderate Disagree	0	0%
Disagree	2	12%
Neither	7	41%
Agree	3	18%
Moderately Agree	0	0%
Strongly Agree	4	24%

Circuit court reviews of Family Law Master recommended orders create excessive and costly delays.

Ten of 18 Family Law Masters agreed that recommended orders cause excessive and costly delays (see Table 10). One Family Law Master stated that "*reviews in my region are rare and usually quite prompt. I do think, overall, FLM's should have final signature authority with appeals directly to the Supreme Court, however, I understand that cannot happen under the current structure.*"

Table 10
Recommended Orders are Delayed and More Costly

Response Category	Total Number of Responses	Percentage of Responses
Strongly Disagree	3	17%
Moderate Disagree	0	0%
Disagree	3	17%
Neither	2	11%
Agree	5	28%
Moderately Agree	2	11%
Strongly Agree	3	17%

Structure: Family Law Masters' lack of contempt power creates excessive and costly delays.

Table 13 shows a brief summary of the responses to question 12. There were a total of 17 Family Law Masters who responded to question 12. Table 13 also shows that there were more Family Law Masters who Agreed in some form with question 12 than those who Disagreed in some form with question 12. The average response was to Agree. One Family Law Master stated that "*a FLM lack of contempt authority often requires litigants to have and appear at two separate hearings. If FLM had contempt authority, most enforcement actions could be taken care of in one hearing before one judicial officer.*" Yet another Family Law Master stated that "*visitation and child support should be enforced by those of us who made the order - who know the reasoning behind the decision.*"

(Will combine on next draft)

(will combine on next draft)
Summary of Responses to Question 12 - Additional Structure 3

Response Category	Total Number of Responses	Percentage of Responses
Strongly Disagree	1	6%
Moderate Disagree	0	0%
Disagree	3	18%
Neither	1	6%
Agree	6	35%
Moderately Agree	1	6%
Strongly Agree	5	29%

Structure: All Family Law Masters should be appointed full time to avoid conflicts of interest that may arise from their private practice of law.

Twelve of 18 Family Law Masters agreed that all masters should be full-time appointments. This sentiment is obviously not just held by full-time masters as the following comment atests. One Family Law Master stated that "*absolutely and unequivocally. I do not see how any judicial office (at this level) can avoid significant and frequent conflicts. However, many of my part - time FLM friends tell me they do it successfully! I am part - time and except for very occasionally do not engage in any private practice of law (will writing mostly) because I do not have time. I work as a FLM well over 40 hours each week and still have a backlog.*"

Table 11
Summary of Responses to Question 13 - Additional Structure 4

Response Category	Total Number of Responses	Percentage of Responses
Strongly Disagree	5	28%
Moderate Disagree	0	0%
Disagree	0	0%
Neither	1	6%
Agree	2	11%
Moderately Agree	0	0%
Strongly Agree	10	56%

Family Law Masters need more support staff for pro se litigation to prevent a potential conflict of interest due to the assistance they provide pro se litigants.

Eleven of 17 masters believe that more support staff would prevent the conflict sometimes presented when pro se litigants request assistance from family law masters.

Table 12
Summary of Responses to Question 14 - Additional Structure 5

Response Category	Total Number of Responses	Percentage of Responses
Strongly Disagree	3	18%
Moderate Disagree	0	0%
Disagree	1	6%
Neither	2	12%
Agree	1	6%
Moderately Agree	3	18%
Strongly Agree	7	41%

APPENDIX A

WHAT IS A IV-D ACTIVITY

The Bureau for Child Support Enforcement has determined a IV-D activity to consist of the following cases:

1. Public Assistance case: a non-custodial parent whose child or children are determined to be eligible for public assistance benefits under Title IV-A of the Social Security Act and who are receiving IV-D services or have been referred to IV-D for services. All active public assistance children associated with a non-custodial parent are automatically referred to IV-D for services and once referred, are deemed to be full service cases. Cases in which the children are receiving food stamps only are not referred for IV-D services.

2. Medicaid case: a non-custodial parent whose child or children are determined to be eligible for medical assistance benefits under Title XIX of the Social Security Act and who are receiving IV-D services or have been referred to IV-D for services. All active medical assistance children associated with a non-custodial parent are automatically referred to IV-D for services and once referred, are deemed to be full service cases. This category is used to differentiate between public assistance cases, where cash and medical assistance may be received in combination, and Medicaid only cases.

3. Foster Care case: a non-custodial parent whose child or children are determined to be eligible for Foster Care maintenance payments under Title IV-E of the Social Security Act and who are receiving IV-D services or have been referred to IV-D for services. All active Foster Care children are automatically referred to IV-D for services and once referred, are deemed to be full service cases.

4. Transitional Child Care case: a non-custodial parent whose child or children are former recipients of public assistance and who continue to receive transitional child care payments and full IV-D services.

5. Public Assistance or Foster Care Arrearage-Only case: a non-custodial parent whose child or children are former recipients of public assistance or Foster Care maintenance payments, and the non-custodial parent owes a child support arrearage which is assigned to the State. These are cases in which the BCSE is no longer enforcing the current support obligation because either current support is no longer owed, or at the caretaker's request or non-compliance, the BCSE is no longer providing services to the family. Matters concerning arrears owed to the State are considered to be IV-D activities.

6. Non-Public Assistance case: a non-custodial parent whose child or children are not receiving public assistance, medical assistance, or Foster Care maintenance payments, and whose application for full IV-D services has been ***received*** by the BCSE. Federal funding is not available for non-public assistance child support cases, and is not a IV-D case, until the day a signed application for ***full services*** is received by the BCSE.

7. Post-Public Assistance, Post-Medicaid, or Post-Foster Care case: a non-custodial parent whose child or children are former recipients of public assistance, medical assistance, or Foster Care maintenance payments, and who continue to receive full IV-D services. Federal funding will continue for such cases, without further application, as long a recipients of the services comply with IV-D requirements and

maintain full services.[2]

There is no federal funding available for cases which apply for limited services from IV-D, such as Income Withholding Only or Collection and Distribution Only. With the exception of Arrearage Only cases, limited service cases, although maintained by the IV-D agency, are not to be counted as a IV-D activity. Spousal Support Only cases, although maintained by the IV-D agency, likewise can not be counted as a IV-D activity.

[2] *Excerpt From Memo of Commissioner Sallie H. Hunt*