Maryland’s Family Divisions Are a Model for Change

By Barbara A. Babb, Gloria H. Danziger and Michele H. Hong-Polansky

Adoption of Rule 16-204 has changed how Maryland professionals handle family law cases by creating family divisions and providing mechanisms for case coordination and service referrals. Judges, lawyers, and personnel approach cases and decision-making more holistically, focusing on and effectively addressing the legal and non-legal needs of Maryland’s families.

In fiscal year 2014, 43 percent of all cases filed in Maryland’s trial court of general jurisdiction (the circuit court) were family law cases (Court Operations Department, 2014: CC-5). Historically, Maryland courts, like many states’ family justice systems, lacked a uniform structure to consolidate family law issues for an individual family. As a result, families often faced multiple hearings before different judges in different courtrooms to address a variety of issues, such as divorce, domestic violence, delinquency, and child abuse/neglect. This system created tremendous hardship for families (particularly low-income families, many of whom were self-represented litigants) and resulted in fragmented service delivery and inconsistent decision making.

Through the leadership and dedication of former Chief Judge Robert M. Bell, in 1998 the judges of the Maryland Court of Appeals signed Maryland Rule 16-204 (see Babb, 2013: 1126). This rule created family divisions in the circuit courts of Maryland’s five largest jurisdictions and transformed how Maryland courts handle family law cases.

BACKGROUND OF MARYLAND RULE 16-204

Maryland Rule 16-204 grants the family divisions comprehensive subject-matter jurisdiction over the following types of cases: “divorce, annulment, and property division; custody and visitation; alimony, spousal support, and child support; paternity, adoption, termination of parental rights, and emancipation; criminal nonsupport and desertion; name changes; guardianship of minors and disabled persons; involuntary admission to state facilities and emergency evaluations; family legal medical issues; domestic violence actions; juvenile causes, including delinquency and dependency; and civil and criminal contempt” (Babb, 2013: 1127, citing Maryland Rule 16-204).

The family divisions receive funding to provide family support services, such as mediation in custody and visitation matters, parenting seminars, and services to assist self-represented litigants. Circuit courts without family divisions also receive funds (subject to availability) for family support services. All circuit courts, including the family divisions, are required to appoint a family support services coordinator. The coordinator’s role is to compile, maintain, and provide lists of available public and private family support services; coordinate and monitor referrals; and report on the need for additional family support services or the modification of existing services (Maryland Rule 16-204).
PERFORMANCE STANDARDS AND MEASURES FOR MARYLAND’S FAMILY DIVISIONS

One of the key outcomes arising from the creation of the family divisions was the crafting of a tool to assess the effectiveness of the courts’ work. An Ad Hoc Committee on the Implementation of the Family Divisions met for two years to formulate a mission statement, system values, and outcome evaluation measures. That work resulted in the publication in 2002 of Performance Standards and Measures for Maryland’s Family Divisions (Performance Standards, 2002: 4).

The Performance Standards begin with a powerful statement that describes the mission of the family divisions (p. 6):

- to provide a fair and efficient forum
- to resolve family legal matters in a problem-solving manner
- to improve the lives of families and children who appear before the court
- to make available appropriate services for the families who need them
- to provide an environment that supports judges, court staff, and attorneys to respond effectively to legal and nonlegal issues

The Performance Standards also specify system values and intended outcomes that family divisions should promote (p. 6):

- to preserve the rule of law
- to stabilize families in transition
- to provide forums for prompt conflict resolution
- to promote co-parenting relationships
- to foster parents as the primary family decision makers
- to maximize ADR methods
- to provide safety and protection
- to preserve family relationships where possible
- to support linkages between resources and needs
- to increase access to the justice system
- to use judicial time efficiently
- to develop a familiarity with each family
- to increase cultural competency

Former Chief Judge Bell has stressed that the Performance Standards “represent the high standards to which we hold ourselves in serving Maryland’s families, and the standard to which we expect others to hold us” (p. 4). The Performance Standards, designed around the Bureau of Justice Assistance’s Trial Court Performance Standards, include five focus areas: 1) access to justice; 2) expedition and timeliness; 3) equality, fairness, and integrity; 4) accountability and independence; and 5) public trust and confidence. Each focus area includes standards, commentary, implementation issues, recommendations, and tools of measurement that should guide the work of the family divisions.

FAMILY DIVISION ACCOMPLISHMENTS

To commemorate the 15th anniversary of the creation of the family divisions, the University of Baltimore School of Law’s Sayra and Neil Meyerhoff Center for Families, Children and the Courts (CFCC) partnered with the Maryland Department of Family Administration, Administrative Office of the Courts (AOC), to host a symposium on June 1, 2015, to examine Maryland’s family justice system. As part of the symposium-planning process, CFCC and the AOC looked at the progress made since the passage of Rule 16-204.

Family support services and the guidance provided by family support services coordinators have fostered Maryland’s significant progress in family court reform. For example, over the last 17 years, courts in many counties have adopted differentiated case management plans that coordinate and consolidate all legal matters involving the same family and that increase efficiency and effectiveness in the judicial process. This allows courts to resolve a family’s legal problems with fewer appearances (Kratovil-Lavelle, 2013: 2). Additional highlights include:

- increased and improved services for families, including assistance for self-represented litigants, parenting classes, custody evaluations, referrals for counseling and anger management, domestic violence advocacy, mediation, family and individual counseling, and substance abuse assessments and referrals for treatment
- websites to help litigants access information about court processes, programs, and services
- greater supports for Spanish-speaking litigants, including domestic relations forms translated into Spanish and made available online
- a Domestic Violence Central Depository database giving courts and law enforcement real-time access to protective and peace orders issued anywhere in the state
- court-referred mediation services for low-income individuals
- community-conferencing diversion program for juvenile offenders
- standards and procedures for court-appointed parent coordinators (Kratovil-Lavelle, 2013: 3-9)

JUDGES AND MAGISTRATES’ SURVEY

In preparation for the symposium, the AOC and CFCC began a reflective journey on the first 15 years of the family divisions by surveying all Maryland Circuit Court judges and magistrates. The survey was designed to identify judicial attitudes and court practices regarding the needs of families and children in family court. Of the 200 judges and magistrates who received the surveys, 88 responded (44 percent), 64 percent of whom were judges, and 65 percent of whom served in the family divisions or on the family law docket at the time of the survey.

There were some surprising responses to survey questions. For example, only 31 percent of respondents were familiar with the Performance Standards, only 5 percent of whom referred to them several times, and only 3 percent of whom consulted them regularly.

The fact that so few judges and magistrates are using the Performance Standards is troubling. One recommendation emerging from the June symposium is that the AOC should train and ensure that family division judges and magistrates are familiar with the Performance Standards and integrate them into the day-to-day operation of the court.

The survey also asked, “Which, if any, of the following Family Division goals has your court or Family Division worked on in the past five years?” The leading goal was “maximizing the use of ADR (alternative dispute resolution),” at 78 percent of respondents. The next highest were providing forums for prompt conflict resolution (76 percent) and promoting co-parenting relationships (76 percent). Lowest on the list of goals were fostering parents as primary family decision makers (56 percent), supporting linkages between resource needs and availability (48 percent), and using judicial time efficiently by providing comprehensive information to judges and masters (44 percent).
Given the high cost of litigation and the huge numbers of self-represented litigants in family court, it is not surprising that 84 percent of judges and magistrates “strongly agreed” that the role of the family court judge is to “promote opportunities for parties to resolve disputes outside court.” On the other hand, 60 percent of the judges and magistrates who refer parties to mediation do not use a screening tool to identify family violence issues before making referrals, which should be a prerequisite before judges refer families to mediation.

When judges and magistrates were asked whether they refer parties to specific services, the top three services were parent education, mediation, and supervised visitation. The referral made least often was to programs for high-conflict parents.

The most important needs of parties in family court, as identified by judges and magistrates, were the following: 1) access to mental health services and drug and alcohol treatment, 2) alternative dispute resolution, 3) prompt and fair resolution of parties’ disputes, and 4) legal representation or a clear understanding of the process for self-represented litigants. When asked what they saw as the appropriate role of the family court in meeting these needs, the judges’ and magistrates’ responses included 1) refer to services, 2) provide opportunities for ADR, 3) only have judges and magistrates who want to hear family law cases and know the law, and 4) not to be “social workers” and “problem solvers.” Finally, respondents were asked to indicate three actions that the courts could take to improve the process for family law cases. They responded provide more funding for services, allow one judge to hear all of the family legal issues related to one family, and increase the number of pro bono attorneys.

Survey responses overall indicate that judges and magistrates in Maryland value supporting and strengthening the family unit. Referrals to community services and screening procedures to ensure that appropriate services are put in place enable courts to offer useful tools to parties. All judges and magistrates in Maryland’s family divisions, however, must familiarize themselves with the Performance Standards and work to apply them routinely (p. 4). Courts must implement the standards and also must assess families on a case-by-case basis to ensure that the recommended services are appropriate for each family. Acknowledgment and application of these standards can provide consistent and effective results for families and children across Maryland.

CONCLUSION

Maryland has made great progress since the creation of the family divisions, particularly with regard to its holistic approach to family law cases. Rule 16-204 arms courts with many of the tools needed to give families and children the help they need to improve their lives. Significant work remains, however. Moving forward, judges and magistrates must continue to hold themselves to the high standards set out in the Performance Standards. As courts evaluate cases individually, they require increased funding to expand the array of available and necessary services (particularly for substance use treatment and mental health concerns) to address the needs of children and families effectively. As the number of self-represented litigants increases and as Maryland’s demographics change, self-represented litigants and non-English speakers need additional support. Finally, all family justice system professionals must commit to ensure that Maryland’s families and children receive efficient, effective, and responsible service.

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REFERENCES


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Barbara A. Babb (left) is the director of the University of Baltimore School of Law Sayra and Neil Meyerhoff Center for Families, Children and the Courts; Gloria H. Danziger (center) is a senior fellow at CFCC and Michele H. Hong-Polansky (right) is CFCC’s program manager.
Judicial Education for Today’s Family Court Judge Is Essential

By Janice M. Rosa

Comprehensive judicial education for family court judges is the underpinning of fair, informed and equal justice that is essential for communities nationwide.

The family court judge presides over the original “problem-solving” court. He or she is tasked with helping families reorganize after a separation or divorce, resolving disputed matters among its members, and often determining the extent and breadth of future family relationships. Those cases often are fraught with high emotions and shifting scenarios that can compromise clear thinking from litigants, their attorneys and even the court. Often, those cases are part of a crowded court docket of matters with similar urgency and distress.

Who are the judges who preside over these cases? The answers are as varied as the state, the county and the court district. Some have come to the bench by election, while others have come through various appointment and retention processes. They may be in family court by choice or, all too frequently, directed to the family court assignment to “pay their dues” with an undesirable, unwieldy caseload in what sometimes is viewed as the lowest rung in the court system. They may have come to the bench with little or no interest or experience handling the many nuances of family law, or they may have concentrated their practices in family law matters. They may be rotated through the family court assignment by court rule with little control or say in the assignment or they may have carefully sought the family law docket and earned expertise and facility in handling family law cases.

Regardless of the path to family court, these judges are asked to preside over a palpably different kind of case than almost any other. In most cases, a judge will adjudicate the rights and wrongs and responsibilities or fault of litigants whose cases are frozen in time – snapshots of past events. This is true of the criminal, medical malpractice, personal injury, contract dispute or property and estate rights cases. By contrast, the family court judge presides over a docket full of fluid docudramas, with ongoing interactions and shifting scenarios that can change many times while the case is before the judge. Nothing stays neatly in the confines of its case folder.

To compound the difference between family law and most other disputes, family court judges often are called upon to assess those past events with an eye to predicting future outcomes – making educated guesses on best interests and wellbeing of children in custody cases, for example – which will have a profound impact on a person’s life.

To do this correctly, a judge must be willing to hear the whole story in context, make assessments based on something more valid than instinct or bias, and then preside over the case in an efficient and thoughtful manner, inflicting the least amount of forensic trauma on the family and leaving them room to heal.

Timeliness and decisiveness, together with courtesy and unwavering respect for everyone, must be a hallmark of every family court judge. A fair degree of thoughtfulness and humility will help these judges with litigants who are often at their most vulnerable, who experience emotions running the gamut and find their vital relationships at risk.

A competent family court judge first and foremost has command of the same knowledge and skills that one expects from any well-trained trial court judge. Judges must be well-versed in procedural state court rules and processes, as well as evidence and all relevant subject matter of the cases before them. Family court judges also will need to add broad competency in a wide range of subjects, such as bankruptcy, real property, estate, immigration, education, criminal law, and the wide variety of federal laws that impact child custody, child support, domestic violence, retirement plans and military families, to name the most common. It is a truly interdisciplinary caseload.

Family court judges often are presiding over cases with one or more self-represented parties and must become adept at eliciting the information they need to decide the case fairly and without crossing ethical lines of impartiality. Training in access to justice and the needs and perceptions of the public are critical. Family court judges, more than most others, also face a challenging ethical landscape that requires the judge to create his or her informed and thoughtful judicial philosophy that maintains both impartiality and the appearance of it in all dealings with the public, the bar and allied professionals. Many well-intentioned, or not so well-meaning, individuals will seek the judge’s ear in ex parte contact that taxes the judge to remain ever alert. Both evidence and ethics trainings should be tailored for family court judges and their unique challenges.

Judges are lawyers by training, not psychologists, social workers, economists or accountants. Family law judges need case specific training that is not part of their legal training—subject matter statutes and case law are just the beginning. Every judge presiding over these cases must receive preliminary and ongoing information on a host of subjects. Those include child development and family dynamics, child maltreatment, substance abuse and mental health impairments, and the pervasiveness and danger of domestic violence in the varied ways it appears within families.

All of that knowledge forms the basis of trauma-informed decision making, and underscores the awareness that forensic trauma – the stress of litigation and unresolved issues – must be reduced whenever possible. A good grasp of alternative dispute resolution techniques and strong support for them when appropriate to reduce litigation costs makes for an effective family court judge. Hand in hand with trauma is the judge’s need to be culturally competent, to understand one’s own biases, and to recognize that the definition of what constitutes a family has undergone great change in just a few decades. Likewise, often the makeup of a judge’s community has been changing, with new immigrants and new cultures of which the judge was not a part.

Financial training on the intricacies of retirement plans, tax implications and a basic accounting knowledge of financial statements are all needed to competently apportion marital property rights and determine spousal or child support since, in most cases, judges will have no other professionals or attorneys providing guidance.

Family court judges must become leaders both on and off the bench, and those skills must be cultivated and taught. Knowledge of the community’s resources and how to marshal them for the community members appearing in court will serve the judge and litigants well.
Court-Appointed Special Advocates Improve Judicial Decision-Making

By Diane Nunn

Court systems nationwide daily adjudicate cases involving children – everything from child abuse, neglect, child custody and child support to divorce, family violence, guardianship, juvenile justice and parentage. Judges are required to make decisions that may have a lifelong impact on the child and the child’s family. Volunteer programs have been established throughout the United States to assist children, domestic violence and human trafficking victims and other vulnerable individuals involved in court proceedings.

Some local communities have many comprehensive volunteer advocacy programs, while others have very few. The availability of such programs may vary because of limited local financial resources or insufficient local volunteer pools. Access to programs may be related to knowledge, or lack of knowledge, about volunteer programs that are well established and have a proven track record. This article highlights a very special program that exists in many local jurisdictions – Court Appointed Special Advocate (CASA) programs.

CASA

Historically, CASA programs have been used very successfully in juvenile dependency (child abuse and neglect) proceedings. These programs provide substantial benefits to children who appear in these proceedings and to the juvenile or family courts that have responsibility for these children.

CASA volunteers improve the quality of judicial decision-making by providing information to the court concerning the child. CASA volunteers also may help by identifying services for the children whom they are assisting. Advocates can provide a consistent adult and support person for children throughout the often long and complex court process.

These CASA volunteers are not intended to serve as a substitute or replacement for child welfare professionals or the child’s attorney. In most instances, the specially-trained volunteer has more time to spend with the child than the child welfare professional or child’s attorney and, therefore, can provide additional information so that the court can make the best decision for that child. As essential partners in the court process, CASA volunteers often have been instrumental in permanency planning, including reunification with a child’s birth parents or ongoing contact with family members.

The CASA concept was first implemented in Seattle in 1977 by then-King County Superior Court Presiding Judge David Soukup. There are currently numerous jurisdictions in California and the United States which utilize some variation of the CASA concept. They have developed over the years under the jurisdiction of the juvenile or family court. Each program is unique and is designed to be responsive to the specific needs of the local jurisdiction and community that it serves. Central to the success of CASA programs is the establishment and coordination of national, state, and local standards and guidelines for the screening, recruitment, training, and staff support of volunteers.

The National CASA Association was established in 1982. Today, the mission of the National CASA Association states: “The National Court Appointed Special Advocate Association, together with its state and local member programs, supports and promotes court-appointed volunteer advocacy so every abused or neglected child in the United States can be safe, have a permanent home and the opportunity to thrive.” In 1983, there were 29 states with CASA programs. According to the National CASA Association, there are now nearly 1,000 CASA/Guardian Ad Litem (GAL) programs in 49 states and the District of Columbia. (A GAL is appointed by the court to investigate what solutions would be in the “best interests of a child.”)

From the beginning, the CASA model has had bipartisan support at the national, state and local levels. For example, in 1985, President Ronald Reagan presented the National CASA Association with the President’s Volunteer Action Award for “outstanding volunteer contribution, demonstrating accomplishment through voluntary action.”

THE CALIFORNIA EXPERIENCE

One of the first CASA programs established in California was in Los Angeles in 1978 under the leadership of Judge Peter Gianinni. Presiding Juvenile Court Judge Richard “Skip” Byrne and Supervising Judge Paul Boland provided oversight to the program, then known as the Child Advocates Office. By 1987, there were 12 CASA programs in California.

Legislation (Statutes of 1988, Chapter 723 section 100 of the Welfare and Institutions Code) established an optional state-assisted program of court appointed special advocates for children involved in juvenile dependency (child abuse and neglect) proceedings, including guardianships, adoptions and actions to terminate parental rights to custody and control. The legislation also encouraged the development of programs to serve multiple counties.
The statute stated:

The Judicial Council shall establish a planning and advisory group consisting of appropriate professional and program specialists to recommend the development of [Court Appointed Special Advocate (CASA)] program guidelines consistent with the guidelines established by the National Court Appointed Special Advocate Association, and with California law; the council may require additional or more stringent standards. State funding shall be contingent on a [local CASA] program adopting and adhering to the program guidelines adopted by the council.

The program guidelines adopted by the council shall be adopted and incorporated into local rules of court by each participating superior court as a prerequisite for funding pursuant to this chapter.

The California guidelines were designed to provide a framework for ensuring the excellence of California CASA programs and volunteers. They were intended to be consistent with the standards adopted by the National CASA Association while conforming to California law and procedure. At the same time, the California guidelines were meant to give full rein to the local efforts of the bench, attorneys, child welfare professionals, advocates and other interested persons to adapt the CASA concept to the special needs and circumstances of local communities.

Central to the intent of the California guidelines was the effort to provide a vehicle for the presiding judge of the local juvenile court to exercise fully-informed and effective oversight of the local CASA program and volunteers.

The Judicial Council was required to adopt program guidelines for local CASA programs to assist abused and neglected children who are the subject of judicial proceedings. The legislation also called for the establishment of a grant proposal program to be administered by the Judicial Council. Any trial court that sought funding under the grant program had to adopt the council guidelines and incorporate them into local rules of court. Since the original legislation did not have any funding for the grant program, the guidelines were optional.

Beginning with a $100,000 grant, the Judicial Council has been successful in obtaining state funding for the council’s CASA program, which currently has over $2 million in funding. Since the original funding was so limited, the grant awards were made through a competitive process. Although some of the early grant awards were very small, local programs could use the imprimatur of the council’s grant award to obtain funding from other sources. In recent years, the awards have been made using a formula rather than on a competitive basis. There are currently 45 CASA programs in California, serving 48 counties.

Although the original legislation only provided funding to CASA programs that assisted children involved in juvenile dependency proceedings, some of the early CASA programs also provided volunteer advocates for children in juvenile justice proceedings. California has amended its statutes so that local programs can provide volunteers to assist non-minor dependents in juvenile dependency proceedings, youth in juvenile justice cases and youth who are designated dual status (dependent and delinquent). Due to resource and policy constraints, many programs still limit the assignment of volunteers to children in juvenile dependency cases.

APPLICATION TO OTHER VOLUNTEER PROGRAMS

The CASA model of using specially-recruited, screened and trained volunteers increasingly is needed to assist vulnerable populations involved in court proceedings. With recognized standards, guidelines and staff support for the volunteers, the model could be used in guardianships, conservatorships, elder abuse cases and in other court forums.

**Nation’s First Post-J.D. Certificate in Family Law Launched at University of Baltimore School of Law**

Innovative practice-based program developed with significant input from leading family law attorneys and judges reflects UB Law’s commitment to family law education reform.

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In the last few decades, the volume of family law cases has increased dramatically in jurisdictions nationwide. In Maryland during the 2015 fiscal year, 43 percent of trial court filings consisted of family law cases—exceeding the proportion of criminal and other civil cases. With a rise in self-represented clients and the multi-dimensional health and social issues that contribute to families in crisis, family law cases have become increasingly complex. In addition, the present shift away from family law litigation toward alternative dispute resolution requires that family law attorneys gain an interdisciplinary education.

The Post-J.D. Certificate in Family Law was designed for new attorneys beginning to practice in the area of family law and experienced attorneys seeking to add family law expertise to their practice areas.

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Diane Nunn is the judicial liaison for the National Court Appointed Special Advocate Association and former director of the Judicial Council of California’s Center for Families, Children & the Courts.
Editor-in-Chief of Family Court Review Seeks Journal Articles

Professor Barbara Babb, the editor-in-chief of the Family Court Review (FCR), the leading interdisciplinary academic and research journal for family law professionals, is encouraging authors to submit articles for publication in FCR.

Professor Babb is founder and director of the Sayra and Neil Meyerhoff Center for Families, Children and the Courts and associate professor of law at the University of Baltimore.

Published in cooperation with Hofstra University Law School’s Center for Children, Families and the Law, FCR is the quarterly journal of the Association of Family and Conciliation Courts (AFCC), which has over 3,330 members nationally and internationally.

Robert Emery, Ph.D., the journal’s social science editor, Matthew Kiernan, the faculty administrative editor, and Professor Babb welcome articles on legal and/or social science aspects of family law, family courts and the resolution of family disputes. Submitted articles are peer-reviewed.

They also encourage suggestions for special issue themes and/or guest editors. Those interested in serving as a guest editor, please contact Professor Babb at bbabb@ubalt.edu or 410-837-5661. For more information, please refer to the AFCC website: http://www.afccnet.org/Publications/Family-Court-Review/Submit-an-article.

SUPPORT CFCC’S VITAL WORK

The Sayra and Neil Meyerhoff Center for Families, Children and the Courts (CFCC), a non-profit organization, offers strategic planning and technical assistance to structure Unified Family Courts (UFCs), as well as evaluations of the effectiveness of these courts and their related programs.

Other CFCC services include compiling surveys and reports, formulating performance standards and measures, providing training and workshops, and organizing conferences for the judicial, legal and court communities. CFCC relies on the support of foundations, grants and partners to fulfill its mission to improve the lives of families and children and the health of communities through family court reform.

Visit http://law.ubalt.edu/centers/cfcc for additional information. See also: http://www.facebook.com/CFCCatUBaltLaw.

DVD ON UNIFIED FAMILY COURTS NOW AVAILABLE

A compelling DVD, “Unified Family Courts: Efficient, Effective, Responsible,” puts a human face on the Unified Family Court (UFC), a court model designed to address therapeutically and holistically the complex nature of family law cases. The DVD contrasts the experiences of two women in their divorce proceedings.

As portrayed in the DVD, one woman was subject to a traditional court system, while the other’s divorce was handled in a UFC. The University of Baltimore School of Law’s Sayra and Neil Meyerhoff Center for Families Children and the Courts produced the DVD, which includes interviews with judges, attorneys, services providers and UFC experts.

For a free copy of the DVD, please email Professor Barbara A. Babb at bbabb@ubalt.edu.

The Sayra and Neil Meyerhoff Center for Families, Children and the Courts (CFCC) works to ensure that the practice of family law in Maryland, nationally and around the world improves the lives of families and the health of communities. CFCC advocates the use of therapeutic jurisprudence, the understanding that the law has an effect on behavior, emotions and mental health, and a holistic approach to problem-solving in family law and family justice system matters.
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cfcc@ubalt.edu

The Sayra and Neil Meyerhoff Center for Families, Children and the Courts
University of Baltimore School of Law
1420 N. Charles Street
Baltimore, MD 21201

Telephone: 410-837-5750
Fax: 410-837-5737
E-mail: cfcc@ubalt.edu
Web site: http://law.ubalt.edu/centers/cfcc

Address: U.S. Postage
PAID
Baltimore, MD
Permit # 4903