STRENGTHENING CASE MANAGEMENT OF CHILD SUPPORT CASES IN VIRGINIA JUVENILE & DOMESTIC RELATIONS DISTRICT COURTS:

COLLABORATING TO BENEFIT CHILD SUPPORT AND SELF-REPRESENTED CLIENTS

FINAL REPORT AND EVALUATION

Funded in part by a Section 1115 Grant from the U.S. Department of Health and Human Services, Office of Child Support Enforcement

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Division of Child Support Enforcement
Virginia Department of Social Services
October 2006

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Prepared by:

Drew Swank, Project Director
Lelia Hopper, Project Manager
Court Improvement Program
Office of the Executive Secretary
Supreme Court of Virginia

Charles R. Owen, Project Manager
Division of Child Support Enforcement

Paula Hannaford-Agor, Consultant
National Center for State Courts

John M. Greacen, Project Evaluator
Greacen Associates, LLC

October 2006

Acknowledgments

Originally an idea proposed by the Office of the Executive Secretary of the Supreme Court of Virginia, this project studied Juvenile and Domestic Relations District Court operations with the goal of recommending and implementing changes in eight pilot Juvenile and Domestic Relations District Courts to improve: (1) management of child support dockets and cases, (2) information and support given to pro se litigants, and (3) accuracy and timeliness of paternity and support orders that must be provided to partner agencies. The improvements in each of these areas would not have been possible without the efforts and support of the Supreme Court of Virginia, managing and directing project activities; the National Center for State Courts, providing technical assistance in pro se litigation; and Greacen Associates, LLC, collecting and evaluating the data to ensure the results were well-documented and valid. Many individuals were invaluable to the project, as shown below.

The Supreme Court of Virginia's Office of the Executive Secretary – Lelia Hopper, Court Improvement Project Manager, and Drew Swank, Project Director - worked very hard in successfully putting together three large subcommittees, each with a completely different mission, to secure needed information and recommendations to drive the rest of the project. They also selected the pilot courts and ensured that required tests were made of the recommended best practices and that evaluation data were gathered. Of particular note, Mr. Swank authored two publications as part of the project: (1) a brochure entitled "Child Support, the Courts, and You – A Handbook for Parents" for pro se litigants, providing an overview of child support litigation, and (2) a 36-page "Judges Bench Book on Child Support Enforcement Proceedings," to assist judges of all courts presiding over child support cases, with separate chapters devoted to different types of child support cases and a section with sample forms.

Dr. Todd Areson, Division of Child Support Enforcement, was indispensable as the original project manager, helping write the proposal to obtain a 95 percent federally funded Section 1115 Grant, guiding initial project administration, and ensuring that the final report was comprehensive in its treatment of each project goal and objective.

Two other key project members were: Paula Hannaford-Agor, National Center for State Courts, and John M. Greacen, of Greacen Associates, LLC. Ms. Hannaford-Agor wrote portions of the grant proposal that secured project funding and provided invaluable assistance as an expert in pro se litigation. She also provided staff assistance for Subcommittee A, which addressed assistance for pro se litigants. Mr. Greacen served as the required independent evaluator for the project. Having a wealth of background and experience, and having previously evaluated other court-based projects, Mr. Greacen ensured objectivity with data manipulation and analysis and was a very valuable team member in working with other project members to achieve project goals.

A number of individuals served as Project Advisory Committee and Subcommittee members and were instrumental in discharging the affiliated assignments.

Subcommittee A: Assisting Pro Se Litigants

Honorable Joanne Alper, Arlington Circuit Court Judge
Honorable Gayl B. Carr, Fairfax J&DR District Court Judge
Elizabeth P. Doucette, Esquire
Shauna F. Epps, Disproportionate Minority Contact Coordinator, Department of Juvenile Justice
Ray Hartz, Esquire, Family Law Staff Attorney, Virginia Poverty Law Center
Paula Hannaford-Agor, Esquire, National Center for State Courts, Staff

Subcommittee B: Developing "Best Practices"

Honorable A. Ellen White, Campbell J&DR District Court Judge
Craig Burshem, Esquire, Senior Assistant Attorney General, Office of the Attorney General
Elizabeth P. Doucette, Esquire
Shauna F. Epps, Disproportionate Minority Contact Coordinator, Department of Juvenile Justice
Ray Hartz, Esquire, Family Law Staff Attorney, Virginia Poverty Law Center
Julia F. Ritchie, Harrisonburg J&DR District Court Clerk
Lelia Hopper, Court Improvement Project Manager, Office of the Executive Secretary, Supreme Court of Virginia, Staff
Kathy L. Mays, Director, Judicial Planning, Office of the Executive Secretary, Supreme Court of Virginia, Staff

Subcommittee C: Improving Interagency Operations and Communication

Honorable Gayl B. Carr, Fairfax J&DR District Court Judge
Janet M. Rainey, Manager, Department of Health, Office of Vital Records and Health Statistics
Nathaniel L. Young, Jr., Director, Division of Child Support Enforcement
Sandra W. Brown, Division of Child Support Enforcement, Staff

Bob Owen
Project Manager

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EXECUTIVE SUMMARY

Overview of the Project

To better understand and, ultimately, improve how child support cases are handled in the courts, the Office of the Executive Secretary (OES), Supreme Court of Virginia; the Virginia Division of Child Support Enforcement (DCSE); and the National Center for State Courts (NCSC) collaborated on a two-year, federal and state grant-funded project that comprehensively examined the management of child support cases. The project focused on three core areas, or goals:

- Improving case and calendar management of child support cases in the Juvenile and Domestic Relations District Courts;
- Providing increased support and information to pro se (i.e., self-represented) litigants; and
- Increasing the accuracy and timeliness of providing paternity and support orders to partner agencies.

The primary purpose of the project was to develop "best practices" in each of the three core areas, implement them and evaluate their impact in the pilot courts to determine whether each one improved the efficiency of child support litigation for all participants. Successful best practices could be disseminated and then implemented in other Juvenile and Domestic Relations District Courts in the Commonwealth to improve their management of child support litigation.

This report contains information on: (1) the goals and objectives, (2) the distinct steps and phases, and (3) the results of this initiative. In themselves, project results are important to present to determine the relative success of a demonstration. This final report was prepared with future child support improvement projects in mind. The attachments contained in the Appendices are documents that should prove useful to this and other Child Support and Juvenile and Domestic Relations District Court programs interested in improving their management of child support litigation -- by providing tested "best practices" for adoption or adaptation, as appropriate to their programs.

Evaluation Results: Highlights

Completed by Greacen Associates, LLC, in February 2006, the evaluation summarizes the project's effectiveness in meeting its stated objectives and goals, based on the data collected and analyzed. Five of the eight pilot courts implemented their selected "best practices" in January 2005, as scheduled; three began some or all of their selections sometime after January. All courts continue implementation to date. Whether in the longer term these "best practices" will withstand the test of time remains to be determined, since it was difficult to definitively link particular changes in courts' outcomes to particular practices. Additionally, the required early timing of the evaluation, during first-year implementation, may have resulted in some instances in

implementation before completion of refinement and standardization of the changes both in the courts and in DCSE procedures.

Three Project Goals

- To improve case and calendar management of child support cases,
- To improve the level of support and information available to pro se (i.e., self represented) litigants, and
- To increase the accuracy and timeliness of providing paternity and support orders to partner agencies, including the Department of Health, Division of Vital Records and Health Statistics (more commonly, the Division of Vital Records).

Five Project Objectives

The project staff and Advisory Committee set five objectives by which the success of the pilot courts' efforts could be evaluated:

- To reduce the time from case filing to first hearing,
- To reduce the time that litigants wait in court for their case to be heard,
- To reduce the time required to complete a child support hearing,
- To reduce the proportion of incomplete paternity orders, and
- To increase the satisfaction of litigants in child support cases.

Data Collected for Evaluation

The evaluator collected baseline and post-"best practices" implementation data for all five objectives. These data consisted of:

- Case management data from the state court statistical database;
- Data on waiting and hearing times, recorded by the courts for several days before implementing their "best practices" and again six months after implementation;
- Review of a sample of paternity orders, before and after implementation of the pilot courts' "best practices";
- Month-long satisfaction surveys of litigants before the pilot courts' "best practices" began and again a year later; and
- Satisfaction surveys of judges, court staff, and DCSE counsels and court workers, pre- and post-"best practices."

Findings

- Time from Case Filing to First Hearing – No consistent reduction in time from case filing to first hearing except for Campbell County, which showed a

significant reduction sustained over three quarters. In further reviewing this evaluation point, we believe it likely that there should and could have been earlier coordination with the evaluator, which could possibly have ensued in a more positive overall evaluation. In retrospect, we determined that additional coordination in providing initial court statistics to the evaluator would have possibly altered the results as data more suited to this analysis could have been provided.

- Reduction in Litigant Waiting Time – Mixed results: four of the courts showed decreases in mean waiting time, while three showed increases. Note: Seven of the eight courts did not implement the best practice of hour-certain scheduling of court cases, which we believe would have produced a more positive impact on lowering waiting time for both litigants and lawyers. The evaluator noted that a better measure might have been length of time between scheduled and actual call time for hearings.
- Reduction in Case Hearing Time – Five courts had shorter average hearing times. All seven courts that collected baseline and best-practices implementation data showed reduced or constant median hearing times. While intuition might dictate that shorter hearing durations are desirable, better parameters might have been chosen for measurement. Simple reduction of hearing time can result in hearings of unreasonable brevity.
- Reduction in Proportion of Incomplete Paternity Orders – For the five courts that submitted paternity orders for baseline and pilot periods, the mean percentage of incomplete orders decreased from 43 to 23 percent. No data were collected for the timeliness of submission of these orders to Vital Records.
- Litigant Satisfaction – Mixed: Mean satisfaction scores were up slightly on questions dealing with comprehension of the proceedings and being treated with respect and down slightly for perceptions of being treated fairly and having an opportunity to be heard. Court-by-court analyses did not support that the decreases in litigant satisfaction were related to shorter hearing times (i.e., to less time or opportunity to be heard).
- Judges, Court, and DCSE Staff Satisfaction – All officials reported higher perceptions of the performance of self-represented litigants during "best practices" implementation than during the baseline period.

Recommendations

- The menu of "best practices" developed in the project can serve as the foundation for widespread improvements in the processing of child support cases in the Juvenile and Domestic Relations District Courts throughout the Commonwealth. Many of the courts involved in the pilot continue to employ the improvements they developed, and other courts are planning to use the results of this project to implement similar procedures. The fact that these are being adopted voluntarily reflects well on the results of the project and the statewide dissemination of its products.

- If all pilot courts and the remainder of the Juvenile & Domestic Relations District Courts are to perform at the level of the best pilot courts, however, further improvements will require the involvement of the OES to strongly encourage courts to change current, less-effective practices by adopting or adapting, as appropriate, the “best practices” developed and refined in this project.

Best Practices Selected for Implementation by the Eight Pilot Courts *

Best Practice	Arlington	Campbell	Chesapeake	Chesterfield	Hampton	Montgomery	Fred.\Winchester	Wise	TOTAL
Dedicated DCSE Docket								x	**1**
Hour-Certain Docket	x	x			x			x	**4**
Docket 1st = Easiest/Quickest	x								**1**
Docket by Case Type	x	x		x				x	**4**
Only Meaningful Events in Court		x	x	x			x		**4**
Run Guidelines before Court		x		x			x		**3**
Complete Genetic Testing, Forms before Court	x	x		x			x	x	**5**
Excuse by Consent Pre-Court When Feasible					x			x	**2**
Appoint GAL Early in Case				x	x	x		x	**4**
Leave Court w/ an Order (ID Issues Left)			x			x		x	**3**
Keep Cases w/ Same Team			x					x	**2**
Minimize Down Time	x					x		x	**3**
Verify Address in Each Hearing	x		x		x		x	x	**5**
Clear, Prior Notice to Parents (Recognizance)								x	**1**
Court IT Support to DCSE Database	x		x	x	x	x	x		**6**

Best Practice	**Arlington**	**Campbell**	**Chesapeake**	**Chesterfield**	**Hampton**	**Montgomery**	**Fred.\Winchester**	**Wise**	**TOTAL**
DCSE-- Interview Parents Before Court	x	x				x	x	x	**5**
Court-Available Genetic Testing				x	x	x			**3**
Terminate Court-Issued Orders to Withhold (form)	x	x		x		x		x	**5**
Revise Form DC-603 to advise parents of CSE papers needed for court	x	x		x	x		x	x	**6**
Tackle Employment Issues (DCSE models exist)		x		x	x		x	x	**5**
Provide Self-Rep. Litigants Advance Information (e.g., the handbook)		x	x		x	x		x	**5**
Send Advisement Letter Ahead of Court to Inform Litigants of Rights							x		**1**
Use Admin. Review to Check Case Status, Cut Court Time									**0**
ADR Option – Use Mediation When Appropriate								x	**1**
Create Scripts, Court Formats	x					x			**2**
TOTAL	**11**	**10**	**6**	**10**	**9**	**9**	**9**	**17**	**81**

***** Appendix D provides a brief description of the 25 "best practices" presented to the pilot courts in October 2004. Appendix H offers a more comprehensive background and discussion of how each "best practice" works, including refinements made during the pilot period.

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OVERVIEW OF THE PROJECT

Background

Strengthening Case Management of Child Support Cases in Virginia Juvenile & Domestic Relations District Courts was a joint venture of the Office of the Executive Secretary, Supreme Court of Virginia; the National Center for State Courts; and the Division of Child Support Enforcement, Virginia Department of Social Services. The project sought to address issues of child support litigation facing the children, parents, government agencies, and the courts of the Commonwealth.

The nature of these issues is immense. Half of all children in America are eligible to receive child support before their eighteenth birthday, and one-quarter of all children are supposed to receive child support on a permanent basis. In Virginia alone, more than 470,000 children are entitled to receive child support. These large numbers affect more than the children and parents involved; the courts and taxpayers are also affected. In 2002, Virginia's Juvenile and Domestic Relations District Courts heard 105,000 child support cases. While the DCSE is authorized to establish support orders administratively, nearly half of DCSE's new support orders are established judicially. Furthermore, almost 80 percent of all child support enforcement actions undertaken by DCSE are through the courts.[1]

In many of these cases, the litigants are self-represented, posing unique challenges for the courts. Historically, there are often long delays between the filing of cases and their resolution. There have also been significant issues in recent years about the transmission of correct information from the courts to partner agencies such as the Division of Vital Records and DCSE, which rely on court orders to accomplish their missions.

This two-year grant-funded project focused on three core goals:

- Improving case and calendar management of child support cases in the Juvenile and Domestic Relations District Courts;
- Providing support and information to pro-se (i.e., self represented) litigants; and
- Increasing the accuracy and timeliness of providing paternity and support orders to partner agencies.

[1] Donald W. Myers, *Child Support Arrearages: A Legal, Policy, Procedural, Demographic and Caseload Analysis, Final Report*, Division of Child Support Enforcement, Virginia Department of Social Services, Richmond, August 2004, p. xviii.

Ultimately, the purpose of the project was to develop "best practices" in each of the three core areas to improve for all participants the efficiency of child support litigation. These best practices could then be implemented, as appropriate, in other jurisdictions around the Commonwealth.

Step 1: Assessing the Current State of Child Support Litigation in Virginia

To achieve its goals and develop best practices to aid the courts in improving the efficiency of child support litigation, the project first sought to assess the current state of child support litigation in the Commonwealth. This was accomplished by undertaking the following tasks:

- Analyzing and depicting visually the statutory child support litigation process;
- Observing child support court hearings in different Juvenile and Domestic Relations District Courts of the Commonwealth; and
- Surveying scholarly resources regarding the challenges faced by pro-se litigants and the efforts to assist them.

The visual depiction of the statutory child support litigation process led to the creation of a series of flow charts (see Appendix A) designed to "walk through" various types of child support cases, including:

- Establishing paternity,
- Establishing a child support order,
- Modifying a child support order,
- Enforcing a child support order,
- Disestablishing a child support order, and
- Handling interstate child support issues.

Concurrent with the development of the flow charts, six separate Juvenile and Domestic Relations District Courts were visited by the project director. The six courts were chosen based upon a variety of factors including their child support caseload, ratio of child support cases and number of adults residing in the jurisdiction, geographic location, and population served. The first step in creating the selection criteria was to identify the average number of support cases per jurisdiction in Juvenile and Domestic Relations District Courts, using 2002 case data (the most complete at the time). An important consideration was to select for visits only those courts with "above average" child support caseloads, while still striving for geographic and economic diversity. In 2002, there were 251,173 support cases in Virginia, with the average number of cases being 2,025. Annual court child support caseloads ranged from a high of 16,953 (in Norfolk) to a low of 56 (in Highland County).

The Juvenile and Domestic Relations District Courts selected for visits embodied these characteristics: largest child support caseloads, highest cases per adult ratios with above average caseloads, geographic and demographic diversity. These courts were in Petersburg, Spotsylvania, Norfolk, Henry, Roanoke, and Bedford. Court visits began in February 2004 and continued weekly through mid-March 2004. Prior to the visits, a series of products were created to aid in data collection: a court contact roster, standard statistics for each court, and interview questionnaires for the judges, clerks, and DCSE Special Counsel and court workers in the courts. A court observation form was developed, based on the data gathered and observations made during the visits.

For each of the six courts, a report detailing the practices of the courts was created. These reports were used to create a court visit presentation, which subsequently served as a foundation for the project's child support "best practices," used to brief the Project Advisory Committee.

The final phase of assessing the current state of child support litigation was completed by surveying current scholarly resources regarding the challenges faced by pro-se litigants and existing efforts to assist them. This led to the preparation of two short legal notes, *The Pro Se Phenomenon* and *Pro Se Assistance Programs – An Overview*, and identification of a National Center for State Courts' web link designed especially for self-help support (all three are contained in Appendix B).

Step 2: Assembling the Project Advisory Committee

Essential to the success of the project, and required by the grant proposal, was the Project Advisory Committee. Its membership was to be drawn from Juvenile and Domestic Relations District Court judges, Circuit Court judges, clerks of court, attorneys, and representatives from legal aid organizations, DCSE, and the Department of Health, Division of Vital Records. Designed to provide expert oversight and input into determining the mechanisms and protocols to be used to achieve the stated goals of the project, members were further formed into subcommittees, which focused on the three main objectives of the project: case and calendar management of child support cases, primarily in the Juvenile and Domestic Relations District Courts; providing support and information to pro-se (i.e., self-represented) litigants in child support cases; and increasing the accuracy and timeliness of providing paternity and support orders from the courts to partner agencies.

At its first meeting, the Project Advisory Committee developed a list of potential pilot courts to recruit for the project. Also at this meeting, Advisory Committee members were divided into subcommittees (see Appendix C). Subcommittee A was created to review and modify existing materials and develop new materials related to pro se litigation for child support cases. These materials included model forms, instructions, and educational materials for pro-se litigants for initiating a child support order, establishing paternity, domesticating a foreign child support order, and modifying or enforcing an existing child support order. Subcommittee A also reviewed materials developed to educate judges and court staff about effective ways to respond to the needs

of pro se litigants in child support cases, including judicial management of court proceedings in which pro se litigants participate. Paula Hannaford-Agor (NCSC), an expert on self-represented litigation, staffed this subcommittee.

Subcommittee B was to develop a series of "best practices" with respect to calendar management of child support cases, using the principles developed in the Calendar Management and Delay Reduction Project for Virginia J&DR District Courts.[2] Using existing caseload statistics, Subcommittee B developed a model that diagramed effective case management principles for child support cases and illustrated how this model could be integrated with other case types and statutory time frames in J&DR procedures. The model took into account the unique characteristics of DCSE, non-DCSE, and criminal support cases, as well as the staffing and other resources available in courts of varying size. Kathy Mays, who directed the earlier J&DR Calendar Management Project, and Lelia Hopper, who directs the judiciary's Court Improvement Program for child abuse and neglect cases, staffed Subcommittee B.

Subcommittee C reviewed and developed "best practices" with respect to effective interagency communication and implementation of court orders. Building on the results of an October 2003 DCSE study that addressed issues affecting court-based paternity orders, DCSE, and the Department of Health, Division of Vital Records,[3] Subcommittee C extended examination of effective interagency communication to show cause orders, interim orders (e.g., orders to submit to paternity testing), garnishments to pay current support obligations, liens on assets to pay arrearages, and to issues involving legal vs. biological father, shared custody, and criminal prosecution for willful non-support. Subcommittee C also explored the feasibility of technological enhancements to existing case management software, to reduce the likelihood of omissions and errors related to the processing of child support orders and to notify the court in a timely manner of problems encountered during establishment or enforcement. Sandra Brown (DCSE), who directed the DCSE study, staffed this subcommittee.

During July 2004, the three subcommittees met and discussed specific tasks and functions. At the meetings, a series of presentations was made including the following:

<u>Subcommittee A</u>

- an overview of pro-se assistance programs,
- distribution of pro se assistance,
- reasons litigants choose to become pro se,

[2] This project was a three-plus year initiative led by the Office of the Executive Secretary (OES), Supreme Court of Virginia, to work with the Juvenile & Domestic Relations District Courts to improve their management of court docketing. In the project, OES brought eight court teams at a time to Richmond for a 3-day conference/consultation on docketing cases. The first conference/consultation was held in June 1997. During the initiative, the project worked with almost all 125 Juvenile & Domestic Relations District Courts in the Commonwealth.

[3] Donald W. Myers, *Improving the Court-Ordered Paternity Process: Final Report and Evaluation,* Division of Child Support Enforcement, Virginia Department of Social Services, October 2003.

Subcommittee B

- suggested "best practices" for the Juvenile and Domestic Relations District Courts,

Subcommittee C.

- improvements in interagency communication and collaboration

Step 3: Selecting the Eight Pilot Courts

The pilot court selection process was guided by the Project Advisory Committee, based upon a series of criteria. These courts were then invited to participate in the project and were sent a packet of information to explain the project and the benefits of participation. For courts electing to become pilots, court contact information and judges' contact information were consolidated for easy reference. The eight final pilot courts selected were: Arlington, Campbell, Chesapeake, Chesterfield, Hampton, Montgomery, Frederick/Winchester, and Wise. Data relating to the courts was compiled for subsequent reference. A map of pilot courts was created for reference and publicity purposes. And, for the subsequent pilot court training scheduled for October 2004, a roster of each pilot court team was created, consisting of the names of judges, DCSE field office managers, DCSE special counsels, and their contact information. Separate training invitation letters were sent to each court for the October 2004 pilot courts training seminar held in Richmond.

Step 4: Developing a Menu of "Best Practices"

The initial inspiration for many of the "best practices" grew out of observations made during the initial court visits and subsequent discussions with the Project Advisory Committee. In these discussions, the menu of best practices evolved into its final form. The goals of the best practices remained consistent, addressing:

- Establishing a 30-day turnaround from case filing to first hearing
- Standardizing a 1-hour or less waiting time in court for litigants and lawyers
- Enabling every litigant to leave every hearing with an order
- Reducing the number of court appearances by litigants
- Conducting only meaningful events in court
- Improving litigant understanding of the process
- Using a "menu" of both innovative and existing best practices from which the courts could choose for implementation.

The first iteration of best practices, issued in July 2004, listed four major areas of proposed practices: Utilizing Calendar Management Techniques, Changing Case Handling, Systemic Changes, and Decreasing Numbers of Hearings. In all, 26 best practices were proposed. Over time, through feedback from the Project Advisory Committee and its subcommittees, the best practices were further refined and a second version generated in August 2004. Conceptually, the organization of "best practices" was changed to: Docketing Concepts, Pre-Court Concepts, Courtroom Management

Concepts, and Innovations. The number of best practices remained unchanged, but several were substantively modified. For example, one practice that dealt with automatically terminating wage-withholding orders upon request was modified to become a standardized form motion to terminate the wage-withholding order, based on the recommendation of an Advisory Committee member.

In the third version of the best practices, "Improving Service of Process" was eliminated from the list. While the Advisory Committee remained committed to the concept, it decided it would be preferable to allow each pilot court to determine how best to address its unique service-of-process issues. In the fourth version of the practices, minor alterations were made to the remaining 25 "best practices." This version was presented at the pilot court training seminar (see Appendix D for a summary of the 25 "best practices" presented at the training seminar).

Recognizing that not all suggested practices were suitable for all courts, the project created a "menu" of proposed "best practices" to allow the pilot courts to choose the ones they would implement. Certain practices were highly recommended by the project and, as such, were italicized on the menu. Accompanying the menu were instructions on the selection of these practices. Using this approach, instead of mandating which practices the pilot courts should follow, was later cited as one of the most well-received decisions in the project by the participating pilot courts.

With the assistance of DCSE, new automation support was offered to the pilot courts before the institution of the best practices. Computer access to the DCSE's automated database (APECS) was made available to DCSE personnel working in each of the pilot courts. Some courts already had such access in interview rooms, in the courtroom, or both. During the court visits in early 2004, it was noted that having APECS access would accelerate hearings and decrease the need for continuances, since questions could be addressed in court, rather than having to telephone back to a DCSE office or even continuing the case to research the issue. For those courts lacking Internet access, DCSE paid to have telephone lines installed in courtrooms and interview rooms to enable access to the APECS database. DCSE also paid to maintain the lines and purchased laptop computers and portable printers to equip the court teams during the pilot demonstration. Another best practice that required coordination with DCSE was to share APECS case data with the courts in order to identify which cases were DCSE full-services cases, which were "pass through" (or non-IV-D) cases, and which were not DCSE cases at all. Each pilot court had a written agreement with DCSE to safeguard APECS data, as required by state and federal regulations.

Step 5: Data Collection on Performance of the Pilot Courts

Prior to training the pilot courts and the implementation of their choices of "best practices," it was necessary to measure current performance.[4] Measuring their performance both before and after implementation of the selected best practices would determine the effect of the practices on the court's efficiency. Data collection focused on analysis of three areas – paternity orders from pilot courts, Court Management System data, and data collected by the courts themselves.

Since increasing paternity order accuracy was one of the three main priorities of the project, collecting information on paternity order accuracy was conducted separately. Previous DCSE interest in paternity order errors led to an earlier study of both paternity order requirements and common errors on paternity orders.[5] The results of that effort determined that approximately 67% to 75% of the paternity orders entered by the courts were found to have errors. As part of the data collection phase, each pilot court was requested to send 50 paternity orders entered during August through November 2004 for analysis. These orders were examined for completeness and conformity with state statute and regulations.

The final phase of data collection involved the efforts of the pilot courts to collect case data, which was reviewed for completeness by project staff before being evaluated by the project evaluator, Greacen Associates. Using a court data form with accompanying instructions (see Appendix E), the pilot courts were asked to collect data on 100 child support cases. These forms sought information related to case type, representation status, litigant waiting times, hearing durations, and continuance information.

Step 6: Training the Pilot Courts on the Menu of "Best Practices"

As important as creating the best practices was training the pilot courts in their application. To support training in and implementation of the "best practices," the project created and provided to each pilot court a Judges Bench Book on Child Support Proceedings, covering the seven main types of child support cases – Determining Paternity, Determining Maternity, Disestablishing Paternity, Establishing Support, Modifying Support, Enforcement/Rule to Show Cause, and Interstate Issues. The Judges Bench Book included information on the most frequently asked questions by case type, with answers and proposed scripts for each topic (see Appendix F). As addressed earlier, one novel aspect of the project was allowing each pilot court – using the "best practices" menu – to select those practices that would best fit their court at the time of implementation. While certain best practices were highly recommended by the project, none were made mandatory for the pilot courts.

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[4] An independent evaluator, John M. Greacen and his firm, Greacen Associates, LLC, was hired to advise the project on the data collection process, develop pre- and post-survey instruments for the pilot courts, analyze all data collected, and report the results in a separate report. His evaluation is included in this report in the section entitled "Results: Findings, Conclusions, and Recommendations" (starting on p. 10).

[5] Myers, O*p. Cit.*, *Court-Ordered Paternity Process*, Table 1, p. 12.

Early in the process, a training timeline was created. Pilot court training was conceptualized by the project staff and approved by the Project Advisory Committee. On September 13, 2004, a meeting with the Project Advisory Committee was held to brief members on the proposed training plan for the October 21, 2004, training seminar for the eight pilot courts.

The agenda followed in the pilot court training seminar went through several iterations. In addition, two specialized versions of the agenda were created to distribute at the dinner held the night before the training session, one version for practicing attorneys (offering Continuing Legal Education credit) and the other for court clerks, giving the training requirements for the best practices and coordinated with the Educational Services Department of the OES, Supreme Court of Virginia. At the dinner the night before the training session, pilot court team members were also provided the opportunity to interact as a team, as well as with other court teams involved in the pilot demonstration.

Training materials included PowerPoint presentations on all 25 best practices, an analysis of paternity order errors, and a description of existing Case Management System (CMS) data screens. A training notebook, divided into different sections, was given each participant. The notebook's focus was on the menu of best practices and included other material as well:

- Information for working with self-represented litigants and resources,
- Information on Chesapeake's Service of Process Project,
- A summary litigant information sheet, and
- An evaluation form to rate the quality of the training provided.

Step 7: Satisfaction Surveys of Litigants and of Judicial/Court/DCSE Staff

Working from a proposal by the project evaluator to conduct both pre- and post-"best practices" satisfaction surveys, and after consultation between the project evaluator and project director, the evaluator designed final instruments for a litigant satisfaction survey and a satisfaction survey for judges, court, and DCSE staff (counsel and court workers) in the pilot courts, with accompanying instructions (see Appendix G).

The surveys were tested in three non-pilot Juvenile and Domestic Relations District Courts – Pulaski County, Charlottesville/Albemarle, and Norfolk- selected because they represented small, medium, and large jurisdictions in Western, Central, and Eastern Virginia.

Step 8: Pilot Courts' Implementation of "Best Practices"

After selecting their best practices, pilot court teams started planning for implementation. The goal of implementation was to start the best practices at the beginning of January 2005. Some courts – notably, Winchester/Frederick, Montgomery, and Arlington – were unable to institute some or all of their best practices then. The

limited data collected in these courts hindered the evaluation in that trends could not be clearly identified showing either positive or negative impacts. To aid in implementation, the project director visited each pilot court in early 2005 to observe their cases and make suggestions regarding implementation, using a checklist to ensure that key points were addressed.

Throughout implementation of the best practices, the project director provided assistance to the courts. For example, he helped the pilot courts coordinate with DCSE to improve access to DCSE case data, in order to differentiate between DCSE cases and non-DCSE cases, developing a memorandum of agreement between the two parties. Similarly, he coordinated DCSE efforts to install Internet access lines in the pilot courts at the beginning of the project and, later, ensured that the lines were being maintained.

Step 9: Refining "Best Practices" during the Implementation Phase

Throughout the implementation phase, best practices were refined and new ones developed. The modified and newly developed practices included:

- Rewritten Menu of Best Practices, based on lessons learned;
- An Address Notification Form;
- A Rewritten Alternative Dispute Resolution Form;
- An Attorney Notification Letter;
- A Child Support Questionnaire;
- An Order to Complete the Child Support Questionnaire;
- A Payment Owed Form; and
- An Order of Support Notice.

Appendix H contains an extensive discussion of the modified and newly developed "best practices."

In brief, the Address Notification Form is used each time parties arrive in court, to allow the court to verify addresses. The Child Support Questionnaire and the Order to complete it are a variation of the re-written DC-603, with the Order making completion of the revised DC-603 compulsory. The Attorney Notification Letter is a variation of the proposed advisement letter. The Payment Form is used by DCSE in one court to identify the arrears and recent child support payments. Lastly, the Order of Support Notice informs non-custodial parents of their obligation to pay the right party, on time, in the right amount. By signing the form, the party acknowledges his/her obligation and is informed of its mandatory nature.

Step 10: Dissemination of Initial Lessons Learned

Important to the longer-term success of the project is dissemination of the lessons learned to courts across the Commonwealth, at minimum. Initial dissemination in Virginia took several forms and was provided to many recipients.

- Two statewide presentations were made. The first, in April 2005, was at the DCSE Best Practices Summit in Richmond. The second presentation was made to the Juvenile and Domestic Relations District Court Judges in August 2005, using early, preliminary results from implementation of the "best practices" in the pilot courts.
- In conjunction with these presentations, two newsletters were written for statewide distribution to the DCSE offices and the Juvenile and Domestic Relations District Courts. These vehicles kept partner agencies and their staff abreast of the status of the project, as well as of ongoing implementation of the "best practices" in the eight pilot courts.
- Finally, of primary importance, are the materials and resources developed specifically for pro se child support litigants. These resources include a public web site that focuses on "Child Support and the Courts" and is maintained by the Division of Child Support Enforcement. The URL is: http://www.dss.virginia.gov/family/dcse/court_cases/index.cgi. The web site provides access to a handbook written specifically for self-represented litigants, entitled "Child Support, the Courts, and You." The handbook (a PDF document in both English and Spanish) can be printed directly from the web site. The web site is comprehensive in covering issues affecting child support clients and includes: a glossary of commonly used terms, information on what child support is, general principles of legal proceedings, how to establish or modify an order, the uniform procedures established for handling interstate child support cases, information on disestablishing paternity, Legal Aid telephone numbers in Virginia, and contact information for the 21 Child Support Enforcement district offices and 125 Juvenile and Domestic Relations District Courts in the Commonwealth.

RESULTS: FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

Evaluation Criteria

The project set five specific objectives by which to evaluate the success of the pilot courts:

- Reducing the time from case filing to first hearing,
- Reducing the time that litigants wait in court for their case to be heard,
- Reducing the time required to complete a child support hearing,
- Reducing the proportion of incomplete paternity orders, and
- Increasing the satisfaction of litigants in child support cases.

Greacen Associates, LLC, was retained to advise on the data collection process; to develop two surveys for the pilot courts to administer, before the pilot programs began and, again, after they had been underway for 10 months; to analyze the data collected; and to report the results to the DCSE and the OES, Supreme Court of Virginia.

Data Used in the Evaluation

- Case Management Data

The Office of the Executive Secretary provided a report showing the number of child support cases disposed for each month during 2004 and 2005. The report also showed the average time from filing to first hearing and from filing to disposition for the cases disposed during each month.

From these data, we were able to estimate when the effects of improved procedures were likely to appear in the disposition data, to compute average time from filing to first hearing by quarter during 2005, and to compare it with average time from filing to first hearing for cases disposed during the same quarter of 2004.

- Court-Reported Data on Waiting Time and Length of Hearing

The OES provided the raw data reports from the courts for the baseline and pilot program periods. The courts gathered baseline data in fall 2004 (one in September, most in October, and one in December) and pilot period data in summer 2005 (June and July). Independently, we computed the average and median waiting time and average and median hearing length time for each court from these data.

- Data on Completeness and Timeliness of Paternity Orders

In late August 2004, the project director requested from each pilot court the submission of 50 completed Order Determining Parentage (DC-644) forms to provide baseline data. During the 2005 implementation of "best practices," he again requested from each pilot court completed copies of the same form, to have pilot-period data on court paternity orders. No data was gathered, however, on the timeliness of the provision of these orders to the Department of Health, Division of Vital Records.

- Court Participant Survey Data

Seven of the eight pilot courts administered surveys to judges, court staff, DCSE counsel and court workers before the pilot programs commenced. Six repeated these surveys one year later. The number of surveys completed during the baseline and pilot periods is shown in Table 1.

Table 1

Completed Court Participant Surveys – Baseline

Court	Judge	Clerk	DCSE Caseworker	DCSE Counsel	Totals
Arlington	--	--	--	--	0
Campbell	1	5	1	1	8
Chesapeake	1	1	1	1	4
Chesterfield	1	--	--	1	2
Hampton	2	3	4	1	10
Montgomery	--	1	--	1	2
Frederick/Winchester	1	1	--	1	3
Wise	1	1	1	1	4
TOTALS	7	12	7	7	33

Completed Court Participant Surveys – Pilot Period

Court	Judge	Clerk	DCSE Caseworker	DCSE Counsel	Role Unknown	Totals
Arlington	--	--	--	--	--	0
Campbell	1	2	3	1	--	7
Chesapeake	3	3	1	1	--	8
Chesterfield	1	1	1	1	--	4
Hampton	--	1	2	1	1	5
Montgomery	--	2	3	--	--	5
Frederick/Winchester	2	1	1	--	1	5
Wise	--	--	--	--	--	0
TOTALS	7	10	11	4	2	34

- Litigant Survey Data

Six of the eight pilot courts also administered surveys to litigants that were completed before they left the courtroom and placed in sealed envelopes for return to the evaluator. The numbers of surveys returned and the response rate for the participating courts are shown in Table 2.

Table 2

Completed Litigant Satisfaction Surveys – Baseline

Court	Surveys Returned	Surveys Handed Out	Response Rate
Arlington	--	--	--
Campbell	22	59	37%
Chesapeake	83	102	81%
Chesterfield	26	84	31%
Hampton	56	102	55%
Montgomery	--	--	--
Winchester	51	69	74%
Wise [6]	38	(?)	(?)
TOTALS	276	454	--

Completed Litigant Satisfaction Surveys – Pilot Period

Court	Surveys Returned	Surveys Handed Out	Response Rate
Arlington	--	--	--
Campbell	38	55	69%
Chesapeake	107	134	80%
Chesterfield	47	47	100%
Hampton	59	121	49%
Montgomery	27	27	100%
Winchester	64	80	80%
Wise	19	33	58%
TOTALS	361	497	73%

Findings

- Qualifications about the Findings

The findings set forth below are subject to a number of qualifications.

The dispositions data were provided by the OES, the Supreme Court of Virginia. We are not intimately familiar with the statistical system from which they are derived and may not be aware of all the limitations that should be applied to their use.

The findings in this report are general and, as such, are stated in the form "the pilot projects appear" to have accomplished some result. *It is altogether possible that the effects are not attributable to any particular change but, instead, to the determination of the participating judges and staff to improve the court's performance on the practice being measured.* The fact that different pilot courts show markedly different results on the objectives (i.e., evaluation criteria) measured, suggests a wide disparity either in the practices actually implemented or in the motivation of staff in the different courts to accomplish the given objectives.

[6] Totals assume that Wise County handed out 38 surveys.

The findings are all based on a "before and after" research design. Court outputs after the pilot projects began are compared to the same outputs from the previous calendar year. It is possible that changes in court outputs during the pilot projects are attributable to causes other than the implementation of a "best practice." We have not conducted any analysis to rule out the possibility of such influences.

We have tested the before-and-after litigant satisfaction data for statistical significance. On a statewide basis, none of the differences for the five basic satisfaction scores is significant at the $p<0.05$ level.[7] We did not test for significance at the individual court level: It is extremely unlikely that the smaller sample sizes for individual courts would yield significant results when the much larger statewide sample did not. Also, we did not test the participant survey data for significance; the sample sizes are too small to produce statistically significant results.

Consequently, the reader should approach the analyses of the survey data – both from the litigant satisfaction surveys and from the participant surveys – with skepticism. Differences observed in the data may not reflect actual differences in the attitudes measured.

- Time from Case Filing to First Hearing

The only data available to assess the effectiveness of the pilot courts in reducing the time from case filing to first hearing are monthly disposition statistics. To understand the analysis below, it is necessary to understand the nature of disposition data. The disposition report for a court for September 2005 contains the number of cases disposed by the court during that month. It also shows the average time from case filing to first hearing for cases disposed in that month. This is different from the average time from case filing to first hearing for cases having first hearings that month. Generally, cases disposed in September 2005 had their first hearing considerably before September. The disposition report also shows the average time from case filing to final disposition for cases disposed in that month.

To measure the effect of a pilot program, we would really like to know how long on average it took for cases filed in the month of January to reach first hearing. But, those data are not available. The data that are available are reported not by the month in which the case commenced but rather in the month that the case was disposed. Consequently, we must do some extrapolation to determine what we want to know.

As a first example, consider the data for the Hampton J&DR Court. Hampton is the fastest of the eight pilot courts. Its average time from case filing to disposition during the last nine months of 2005 was 83 days, a week short of three months. Consequently, we can say, on average, that cases disposed in April were filed in January or February. The average time from case filing to first hearing for cases disposed in April should

[7] From a statistician's perspective, then, the data are not sufficiently strong to enable us to reject the "null hypothesis" that there was no difference between litigant satisfaction before and after the courts implemented their selection of "best practices."

reflect the effects of the changes made in January in Hampton, as part of its pilot effort. Data for the months of May, June, and forward should also reflect those changes and, if bugs were being worked out in the pilot program, one would expect the average time from case filing to first hearing would continue to drop for cases disposed in succeeding months.

Now consider a different example. The Chesapeake J&DR Court is the slowest of the eight pilot courts. Its average time to disposition for the last nine months of 2005 was 292 days, almost ten months. To find data bearing on the effects of the pilot program for cases filed in January, we need to look at cases disposed in November.

The consequence is that we have more data on the performance of the Hampton court – dispositions for the last three quarters of the 2005 calendar year – than we have for the Chesapeake court – where we only have dispositions for the last quarter of 2005.

The average number of days from case filing to first hearing shows considerable variation from month to month in all pilot courts. To reduce the variation, we computed quarterly averages.

We compared these averages to averages for the same quarter in 2004.[8] The data in Table 3 show the percentage increase or decrease in the time from case filing to first hearing for the second, third and fourth quarters of 2005 for each pilot court, beginning in the quarter in which pilot court effects would first be expected to appear in disposition data. The court's average time to disposition over the period from April – December 2005 is shown immediately below the court name.

[8] It is appropriate to compare data with data for the same months in the prior calendar year. Court performance is affected by seasonal variations, where the most extreme are the November–December holiday season and the vacation months of July and August. Other variations are also present, however, such as the short month of February, made shorter by a higher than average number of national holidays. Comparing 2005 data against data for the same months in 2004, then, removes these seasonal factors as a complicating factor in the analysis.

Table 3

Percentage Increase/Decrease in Time from Case Filing to First Hearing – Pilot Courts: Last Three Quarters (April – Dec.), 2005

Quarter (compared to same Qtr. 2004)	Court (Average Days from Case Filing to Disposition)							
	Arlington (199)	Campbell (112)	Chesa-peake (292)	Chester-field (186)	Hampton (83)	Mont-gomery (274)	Wise (265)	Frederick/ Winchester (114)
April – June 2005		- 51.6%			+ 75.8%			+ 96.1%
July – September 2005	- 25.8%	- 68.3%		- 6.0%	- 22.4%			+ 17.3%
October – December 2005	+ 14.7%	- 17.7%	- 3.4%	+ 52.7%	- 5.2%	+ 92.9%	+124.5%	+ 49.2%

The only courts to show a consistent reduction in time from case filing to first hearing were Campbell County and the City of Chesapeake. Remember: We have only one quarter of usable data for Chesapeake. Hampton showed an initial negative effect, yet had a positive effect in the next two quarters. Arlington and Chesterfield County showed initial positive effects, not sustained the following quarter. And, the performance of Montgomery, Wise and Frederick/Winchester decreased during the pilot period in all quarters for which we have relevant data.

We have relevant data for 16 quarters for the pilot courts. Half of those quarters show improved performance during the pilot period from the same quarter of the previous year, and half show worse performance during the pilot period. All courts showing improved performance for which we have more than one quarter of data were unable to sustain their initial level of performance through the end of the year.

What, if any, relationship exists between the court's overall record for timeliness of first hearing and its likelihood of improving during the pilot period? Were the slowest courts that ones that were most likely to improve, or vice versa? Hampton, Arlington, Frederick/Winchester, and Chesterfield had the lowest average times to first hearing during 2004. Campbell, Montgomery, and Wise were in the middle tier, and Chesapeake was the slowest by far. The greatest improvement, however, was shown by a middle tier court – Campbell. The next best improvements were for courts that were already fast – Hampton and Arlington. The slowest court made a modest improvement yet remained very slow.

Table 4 shows the range of the pilot courts' overall timeliness in reaching both first hearing and final disposition, today. The relative rankings of the pilot courts have not changed substantially. Chesterfield has fallen from the top tier into the middle tier, while Wise and Montgomery have fallen to the bottom tier.

Campbell is now one of the three fastest courts in overall time to disposition. Arlington, which is very fast to first hearing, is in the middle tier in average time to disposition. Otherwise, average time to disposition mirrors average time to first hearing.

Table 4

Average Days from Case Filing to First Hearing and to Disposition – Pilot Courts

(Cases disposed during the last quarter of 2005 and the last three quarters of 2005, respectively)

Data Reported	Court (Average Days from Case Filing to Disposition)							
	Arlington	**Campbell**	**Chesa-peake**	**Chester-field**	**Hampton**	**Mont-gomery**	**Wise**	**Frederick/ Winchester**
Average Days from Case Filing to First Hearing (Cases Disposed Oct. – Dec. 2005)	35.3	98.1	291.8	164.1	30.5	259.0	311.5	75.7
Average Days from Case Filing to Disposition (Cases Disposed Apr. – Dec. 2005)	199	112	292	186	83	274	265	114

From these analyses, we conclude that the pilot courts did not produce consistent improvements in the time from case filing to first hearing during the implementation of "best practices."

- Time that Litigants Wait in Court for their Case to be Heard

Table 5 reports the average and median waiting times from the data reported by the courts for the baseline and pilot periods. The median represents the time for the fastest one-half of the cases. The table also shows percentage increase or decrease in average and median waiting times for each pilot program.

Table 5
Change in Litigant/Lawyer Waiting Time

Court	Average Minutes Waiting Time			Median Minutes Waiting Time		
	Baseline	Pilot Period	Change	Baseline	Pilot Period	Change
Arlington	n/a	78.5	n/a	n/a	80	n/a
Campbell	7.6	13.5	+ 78%	2	4.5	+ 125%
Chesapeake	27.8	35.9	+ 29%	25	30	+ 20%
Chesterfield	39.2	32.7	- 17%	35	30	- 14%
Hampton	82.5	64.9	- 21%	71	59	- 17%
Montgomery	52.2	26.2	- 50%	50.5	24	- 52%
Frederick/Winchester	45.9	53.9	+ 17%	23	43	+ 87%
Wise	64.1	27.4	- 57%	68	22	- 68%

Four of the seven courts with baseline and pilot period data improved their litigant waiting time during the pilot project, two by 50% or better. Three courts had longer waiting times during the pilot project. Campbell County, although one of the latter three, nonetheless maintained an exemplary waiting time record: Although its average and median times increased, it still called half its cases within five minutes of the scheduled starting time!

Changes in average and median times were relatively consistent with each other for all courts except Frederick /Winchester. There, the median time increased much more than the average time – indicating that many more litigants were impacted by the increases in waiting time than the average waiting time would suggest.

The waiting-time data show that seven of the eight pilot courts rejected the best practice of hour-certain scheduling. All but Campbell maintain "cattle call" dockets – in which all cases are set for 8:30 or 9:00 a.m. or 1:30 or 2:00 p.m. This scheduling process guarantees long waiting times for many litigants.

Overall, the pilot programs appear to have been successful in reducing litigant waiting time. However, it is clear that seven of the eight pilot courts rejected the best practice that would have produced the greatest benefit to litigants and lawyers. And, it is that practice that separates Campbell County's exemplary performance from that of the other seven pilot courts.

- Time Required to Complete a Child Support Hearing

Table 6 reports the average and median hearing times from the data reported by the courts for the baseline and pilot periods. Again, the median represents the time for the fastest half of the cases. This table also shows the percentage increase or decrease in average and median hearing time for each pilot program.

Table 6

Change in Hearing Duration

Court	Average Minutes Hearing Time			Median Minutes Hearing Time		
	Baseline	Pilot Period	Change	Baseline	Pilot Period	Change
Arlington	n/a	6.4	n/a	n/a	5	n/a
Campbell	14.5	7.7	- 47%	10	6	- 40%
Chesapeake	4.4	4.3	- 2%	4	3	- 25%
Chesterfield	16.6	8.7	- 48%	5.5	5	- 9%
Hampton	7.0	9.3	+ 33%	3	3	-
Montgomery	7.2	9.2	+ 28%	4	4	-
Frederick/Winchester	12.2	9.3	- 24%	6	6	-
Wise	4.3	1.8	- 58%	2	1	- 50%

Except for Campbell and Wise courts, changes in average and median times for the same court showed considerable variation. In most instances, the average changed much more than the median, suggesting that the change affected a few exceptional cases. For Chesapeake, the difference was the opposite – showing that the reduced hearing time had a larger impact than the minimal change in the average hearing time would suggest.

With one exception, the pilot courts appear to have moved toward a common range of hearing times during the course of the project. The court with the longest initial average hearing time reduced its average and median times to fall within the range of the other courts. Wise County was the exception. That court had the shortest average and median hearing times and reduced them both dramatically. We question whether reduced hearing time remains a legitimate objective once median hearing times reach two minutes or one minute. Studies have shown that litigants' perception of justice depends in significant part on their ability to be heard: It is hard to envision how that can occur during a one-minute hearing.

Overall, the pilot courts appear to have been successful in reducing the time required for hearing child support cases.

- <u>Reducing the Proportion of Incomplete Paternity Orders</u>

Table 7 presents the results of the review of paternity orders for completeness of required information during the baseline and pilot periods. Five of eight pilot courts submitted paternity orders for both periods; as a group, the percentage of incomplete orders decreased from 43 percent to 23 percent, by almost one-half. Yet, only <u>two</u> of the five courts showed decreases in percentage of incomplete orders. All eight courts submitted paternity orders for one of the two periods.

Table 7

Number and Percent of Incomplete Paternity Orders, by Pilot Court

Court	Baseline (1/04 – 10/04)			Pilot Period (All 2005)		
	Total ODPs Rec'd	Incomplete ODPs (#)	Incomplete (%)	Total ODPs Rec'd	Incomplete ODPs (#)	Incomplete (%)
Campbell	30	8	27%	19	3	16%
Chesterfield	5	5	100%	2	2	100%
Hampton	29	29	100%	59	12	20%
Montgomery	6	2	33%	2	1	50%
Frederick/Winchester	49	7	14%	12	4	33%
TOTAL	119	51	43%	94	22	23%

Two courts increased their percentage of incomplete paternity orders submitted to Vital Records from the baseline to the pilot period; one of the latter submitted six or fewer orders. One court remained the same, at 100 percent incomplete, yet submitted five or fewer orders. Unfortunately, no data were collected for the timeliness of submission of these paternity orders from the courts to Vital Records for the two periods.

- Increasing the Satisfaction of Litigants in Child Support Cases

For the six courts that collected both baseline and pilot-period data, average litigant satisfaction scores increased for three categories and decreased for two. The changes in the scores are quite small and, as noted in the discussion on qualifications on the findings (see p. 14), are not statistically significant. Table 8, below, records the average scores on each litigant-satisfaction question for the two periods.

Table 8

Litigant Satisfaction Scores for Surveys from Six Pilot Courts: Baseline vs. Pilot Period

(using a 5-point Likert scale, where 5 = "strongly agree" and 1 = "strongly disagree")

Question	Baseline Average Score	Pilot Average Score
I understood what happened in court today.	4.43	4.52
I was treated respectfully in court today.	4.64	4.70
I had an opportunity to present my case in court today.	4.39	4.33
I was treated fairly in court today.	4.45	4.42
I understand the order entered by the court today.	4.49	4.55

The average scores that show the largest increases were for increased litigant comprehension of the court process, followed by increased feelings of being treated with respect and increased understanding of the order entered by the court. These results were

consistent with the project goal to educate self-represented litigants about the child support process and to improve the responsiveness of court staff to self-represented litigants.

The largest decrease in litigant satisfaction was for having an opportunity to present one's case, followed by feeling that one was treated fairly in court. While it is plausible that these reductions in satisfaction might be related to shorter hearing times, a court-by-court analysis of the data (presented in Table 9) did not support this hypothesis.

Table 9
Average Litigant Satisfaction Scores: Court-by-Court Comparison
Baseline vs. Pilot Period

(using a 5-point Likert scale, with 5 = "strongly agree" and 1 = "strongly disagree")

	Campbell		**Chesapeake**		**Chesterfield**		**Hampton**		**Frederick/ Winchester**		**Wise**	
Question	**Base-line**	**Pilot**	**Base-line**	**Pilot**	**Base-line**	**Pilot**	**Base-line**	**Pilot**	**Base-line**	**Pilot**	**Base-line**	**Pilot**
I under-stood what happened in court today.	4.64	4.51	4.21	**4.67**	4.54	4.24	4.49	**4.66**	4.48	4.44	4.58	4.58
I was treated respect-fully in court today.	4.77	4.77	4.55	**4.83**	4.65	4.56	4.71	4.65	4.64	4.61	4.63	**4.79**
I had an opportun-ity to present my case in court today.	4.33	4.23	4.32	**4.59**	4.26	**4.39**	4.45	**4.62**	4.38	4.18	4.32	4.11
I was treated fairly in court today.	4.68	4.51	4.27	**4.60**	4.07	**4.35**	4.63	4.57	4.40	4.36	4.58	4.42
I under-stand the order entered by the court today.	4.62	**4.66**	4.34	**4.65**	4.69	4.51	4.44	**4.53**	4.48	**4.66**	4.65	4.53

Note: Where the average score increased from baseline to pilot period, the pilot-period score is **bolded**.

In summary, only one court – Chesapeake – showed increased litigant satisfaction across all five dimensions. Chesapeake's baseline scores were the lowest of any court and increased significantly across the board. Hampton had three increases and two decreases. However, four of the six courts had more decreases than increases – Frederick/Winchester (4 decreases, 1 increase), Campbell and Wise (3 decreases, 1 increase), and Chesterfield (3 decreases, 2 increases).[9] *If we remove the baseline and pilot-period scores for Chesapeake from this analysis, the project as a whole would show reduced litigant satisfaction on all five dimensions.*

We used a court-by-court analysis to test the hypothesis that the reduced overall litigant satisfaction scores were attributable to the project's success in reducing hearing times. Although Wise had the lowest average hearing time by far, it did not have the lowest average fairness score. Chesterfield and Frederick/Winchester – which have relatively long average hearing times – had lower average fairness scores. Wise did have the lowest score for opportunity to be heard. However, Frederick/Winchester and Campbell – which have quite high average hearing times – also had low satisfaction scores comparably.

We have no ready explanation for the increases and decreases in average litigant satisfaction. Chesapeake – the only court showing an across-the-board improvement in litigant satisfaction – continued to take a long time to get to the first hearing, increased its waiting time to an average of 36 minutes, and made little change in its hearing time. By contrast, Campbell – the court making the greatest improvement in average time to first hearing – fell in three of five litigant-satisfaction categories. Neither court's satisfaction ratings can be explained away by survey response rate: Chesapeake's response rate was quite high (80%), making it unlikely that only those who were satisfied completed surveys. Campbell's response rate was a little lower, which would be associated with higher ratings generally.

The litigant satisfaction questions focused exclusively on how litigants were treated during a court proceeding. While we did not ask any questions bearing directly on the time spent waiting for a court hearing to be scheduled or the time spent in court waiting for one's case to be heard, we would expect that any dissatisfaction with those processes would be reflected in the courtroom satisfaction ratings.

Overall, it appears from the average scores that the pilot courts produced mixed litigant satisfaction results, with most courts seeing reductions in many of their satisfaction ratings. In fact, from the baseline to the pilot period, there were reductions in 15 of the 30 total ratings given by the six courts, increases in 13 ratings, and 2 ratings remained the same. The increases and decreases in litigant satisfaction were small,

[9] Campbell and Chesterfield had relatively low response rates for the baseline surveys (37% and 31%, respectively), which may have produced artificially high baseline scores (meaning, litigants unhappy with the experience were unlikely to complete a survey form). Both courts significantly improved their response rate on the pilot-period surveys – to 69% and 100%, respectively. The change in response rate may explain some of the reduced satisfaction ratings for the two courts.

however: The results were not statistically significant, and too much should not be made of them.

Alignment of Success Indicators

We conducted one additional analysis – in an attempt to identify any correlation that might exist among the various measures we assessed. Are courts at the top of the list on one measure likely to appear at the top of the list on all measures? Which measures, if any, seem to be most highly correlated with higher levels of litigant satisfaction? Table 10 presents the results of this analysis.

We have created five columns in the table – one for each measure, except for completeness of paternity orders – and listed all eight courts in rank order on each measure. For litigant satisfaction, we created a composite value derived from the average of the pilot court's scores on all five of the satisfaction questions. We invite the reader to do what we have done – to identify patterns in the way in which the courts are ranked on the various measures.

Table 10

Relative Court Rankings on the Various Measures Assessed

Average Days from Case Filing to Disposition	Average Days from Case Filing to First Hearing	Average Waiting Time in Minutes	Median Hearing Time in Minutes	Average Litigant Satisfaction
Hampton (83)	Hampton (31)	Campbell (14)	Wise (1)	Montgomery (4.72)
Campbell (112)	Arlington (35)	Montgomery (27)	Chesapeake (3)	Chesapeake (4.67)
Frederick/ Winchester (114)	Frederick/ Winchester (76)	Wise (27)	Hampton (3)	Hampton (4.61)
Chesterfield (186)	Campbell (98)	Chesterfield (33)	Montgomery (4)	Campbell (4.54)
Arlington (199)	Chesterfield (164)	Chesapeake (36)	Arlington (5)	Wise (4.49)
Wise (265)	Montgomery (259)	Frederick/ Winchester (54)	Chesterfield (5)	Frederick/ Winchester (4.45)
Montgomery (274)	Chesapeake (292)	Hampton (65)	Frederick/ Winchester (6)	Chesterfield (4.28)
Chesapeake (292)	Wise (312)	Arlington (79)	Campbell (6)	[*see note*]

Note: Arlington did not administer the litigant satisfaction surveys.

We are not able to discern any patterns that suggest significant findings. The first two columns are clearly related to each other, but they do not appear to be related to any of the other columns. The next closest alignment appears to be between litigant satisfaction and the shortness of hearing time. That hardly seems a plausible hypothesis, especially in light of the court-by-court analysis and discussion from Table 9.

In summary, it is clear that none of the pilot courts stands out as excelling in all dimensions studied.

Additional Data from the Litigant Surveys

The litigant satisfaction survey (see Appendix H for the questionnaire) gathered data on a number of other dimensions of the child support process. In our Baseline Data Report, submitted in May 2005, we reported those results by court, noting a number of court-to-court differences that appeared to us worthy of further exploration. The OES circulated that report to the pilot courts, asking them for explanations of the differences observed. The courts were not able to shed light on any of them. We conclude that those differences were more likely the result of random variations in the data, resulting from the small number of survey responses in most courts. Consequently, for this report, we have chosen to report statewide descriptive data combining the results for both the baseline and pilot-period surveys.

Fifty-five percent of survey respondents were custodial parents; forty-five percent were non-custodial parents. Seventy-nine percent of the litigants responding to the surveys have cases with DCSE. Only twenty one percent do not. Seventy-five percent of litigants report that their DCSE cases are "full service," meaning that DCSE is prosecuting the court case as well as handling and distributing payments received from the non-custodial parent.

Seventy-one percent of litigants responding were self-represented. Five percent reported having an attorney who was not present in court. Twenty-four percent were represented. Of those who were represented, fifty-eight percent obtained their attorney through a court appointment; forty-two percent retained their own attorney.

One-third of litigants representing themselves said their case was not complicated enough to need a lawyer. Twenty-two percent said they could not afford a lawyer. The same percentage said their case was with DCSE and, therefore, they did not need a lawyer. Only two percent gave other reasons ("I do not want to spend the money for a lawyer," "I do not know how to find a lawyer," or "I don't trust lawyers").

There was one interesting difference in the pre- and post-surveys worthy of note: *Litigants reported reduced satisfaction with their attorneys during the pilot period, compared with the baseline period*. See Table 11.

Table 11

Litigant Satisfaction with Attorneys:
Baseline vs. Pilot Period

(using a 5-point Likert scale, with 5 = "strongly agree" and 1 = "strongly disagree")

Question	Baseline	Pilot Period
My attorney was helpful in preparing me for today's hearing.	4.46	4.00
My attorney was helpful to me during today's court hearing.	4.5	4.01

Litigant satisfaction scores for the courts are now considerably higher than their ratings for the helpfulness of attorneys.

Represented litigants' satisfaction ratings increased, relative to those of unrepresented litigants during the pilot period (Table 12). In the baseline period, unrepresented litigants rated the court higher than represented litigants in two categories – being treated respectfully and understanding the order entered by the court. In the pilot period, represented litigants rated the court higher in every category except the opportunity to present their case in court.

Table 12

Satisfaction of Represented and Unrepresented Litigants: Baseline vs. Pilot Period

(using 5-point Likert scale, with 5 = "strongly agree" and 1 = "strongly disagree")

Question	Baseline		Pilot Period	
	Represented	Unrepresented	Represented	Unrepresented
I understood what happened in court today.	4.51	4.48	4.60	4.54
I was treated respectfully in court today.	4.59	4.70	4.72	4.72
I had an opportunity to present my case in court today.	4.59	4.39	4.36	4.40
I was treated fairly in court today.	4.47	4.46	4.52	4.43
The outcome of today's hearing was favorable to me.	4.03	3.97	4.17	3.83
I understand the order entered by the court today.	4.46	4.53	4.74	4.53

Court ratings by custodial parents remain higher than those by non-custodial parents. That is not surprising, given the nature and purpose of child support hearings. What is surprising is that, while non-custodial parents' ratings of the court improved slightly during the pilot period, their ratings of the court are relatively high.

Roughly one-third of those completing the survey reported that they had reviewed their financial records before coming to court. The same percentage reported reviewing the court documents. Twenty percent reported reading about the law, and the same percent reported reading the court rules. Thirty percent reported bringing financial records to court.

Seventy-eight percent of those responding reported that they did not prepare for court. However, twenty-eight percent also reported obtaining the help of a friend or family member to prepare. Eighteen percent said they obtained help from an attorney, nine percent from the clerk's office, eight percent from a web site or library, seven percent from a court staff member, and three percent from clergy.

Table 13

Satisfaction of Custodial and Non-Custodial Parents: Baseline vs. Pilot Period

(using 5-point Likert scale, with 5 = "strongly agree" and 1 = "strongly disagree")

Question	Baseline		Pilot Period	
	Custodial	Non-Custodial	Custodial	Non-Custodial
I understood what happened in court today.	4.54	4.30	4.69	4.38
I was treated respectfully in court today.	4.78	4.50	4.80	4.61
I had an opportunity to present my case in court today.	4.46	4.33	4.39	4.38
I was treated fairly in court today.	4.63	4.28	4.61	4.32
The outcome of today's hearing was favorable to me.	4.15	3.65	4.19	3.56
I understand the order entered by the court today.	4.70	4.27	4.71	4.45

When asked what additional resources would have been helpful in preparing for the hearing, the respondents reported the results shown in the following table.

Table 14

Litigant Assessment of the Value of Additional Resources

Resource	Very Helpful	Helpful	Not Helpful	Don't Know
Reading pamphlets or brochures that explain child support and court procedures	43%	32%	13%	12%
Watching a video that explains child support and court procedures	26%	29%	21%	24%
Attending a class that explains child support and court procedures	25%	33%	18%	24%
Talking with an attorney over the telephone about child support and court procedures	36%	34%	14%	16%
Talking with an attorney in person about child support and court procedures	46%	27%	12%	14%
Talking with a resource person at the court about child support and court procedures	43%	31%	11%	15%

In summary, roughly three-quarters of those responding say they would have found written materials, talking with an attorney over the telephone or in person, or talking with a resource person at the court to be very helpful or helpful. A majority say they would have found videos or classes to be very helpful or helpful.

The Participant Surveys

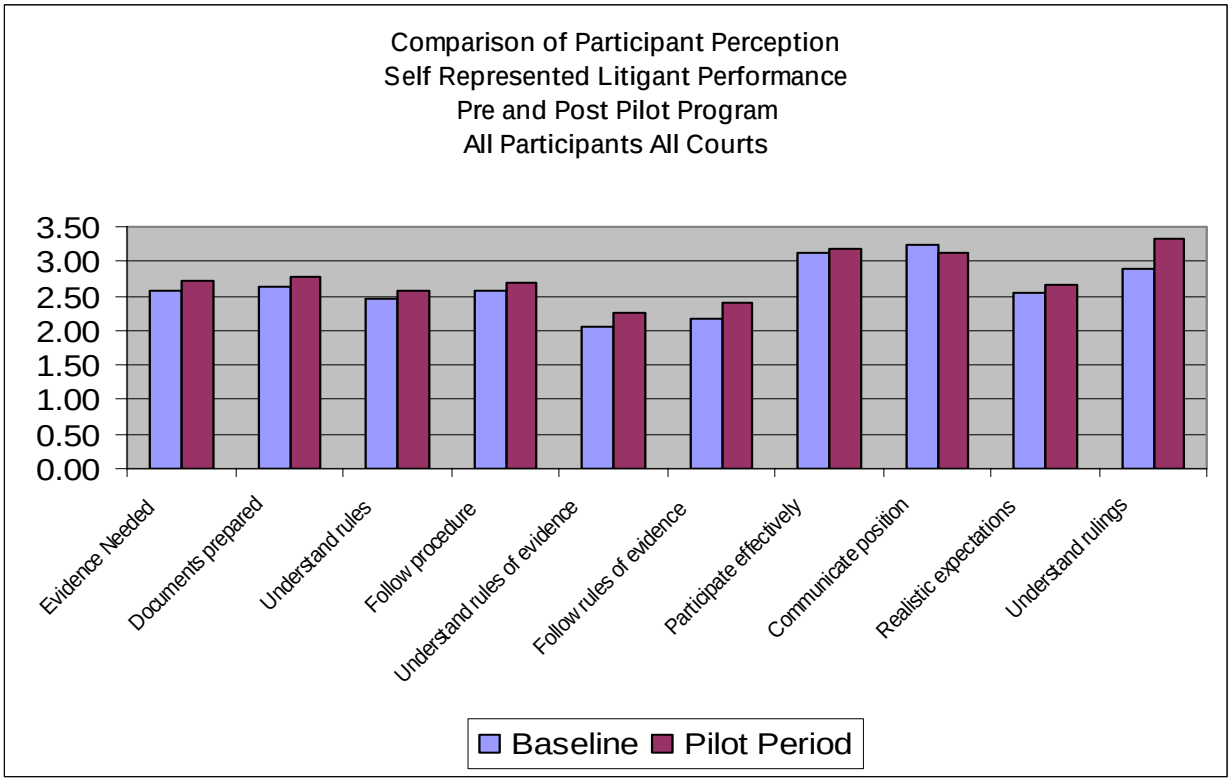
The participant surveys (see Appendix G for the questionnaire) disclose an interesting trend: *During the period of the project, judges, court staff, and DCSE counsel and staff all perceived an improvement in the performance of self-represented litigants.*

Most scores for self-represented litigant performance remain below the midpoint of "3" on a 5-point Likert scale. However, three scores – understanding the court's ruling, being able to communicate their position, and being able to participate effectively in the proceeding – are now above the midpoint.

As noted earlier, the sample sizes for the participant surveys are very small (33 for the baseline survey and 34 for the pilot-period survey), and too much should not be made of these observed differences.

The combined ratings for all participants in all pilot courts (i.e., judges, court staff, DCSE counsel and court workers) are shown below in Table 15.

Table 15



The perceived performance of self-represented litigants increased in every category except for their "ability to communicate their position." That was previously their most highly rated area of performance. It is now slightly behind "understand rulings" and "participate effectively."

While the small extent of these changes and the small number of participant surveys require us to view these results with caution, the fact that participant perceptions have improved almost across-the-board is a positive indication. It is not possible, however, to ascribe the improved scores to actual improvement in the performance of litigants. The improvement is as likely to result from changes in the attitudes of judges, court staff, and DCSE lawyers towards self-represented litigants as it is from improved litigant performance. Note: The survey forms show that the improved perceptions are true for all participants – judges, court staff, and DCSE counsel and staff.

The comments made in response to the two open-ended questions on the Participants Survey are incorporated separately in Appendix I. They are similar to the responses received on the baseline survey and provide useful input for the DCSE and the OES, as they decide what additional steps to take to improve the operation of the courts in child support proceedings. The open-ended questions were: (1) "Based on your experience, what are the three most serious issues facing pro se litigants in child support cases?" and (2) "Based on your experience, what are the three most serious issues facing the courts in dealing with pro se litigants in child support cases?"

Conclusions and Recommendations

The mixed results of this project reflect the limits of "voluntary self-improvement" in the eight pilot courts. While it does appear that the pilot courts generally reduced hearing time and improved the completeness of paternity orders, it is even clearer that the improvements accomplished are modest compared to what could be accomplished if all the courts were able to perform at the level of the best pilot court in each category.

For example, none of the other seven courts come close to Campbell's median waiting time of less than 5 minutes. Arlington has a median time of 80 minutes. Hampton's median time is 59 minutes. The rest of the pilot courts range from 22 to 43 minutes in median waiting time. The median waiting time represents the waiting time for the first half of the litigants to be served. So, half of the litigants waited longer than these times. Size of caseload does not seem to be the determinant in the length of time litigants and lawyers wait for their cases to be heard. By example, Chesterfield and Chesapeake – other courts with high child support caseloads – have median waiting times half as long as that of Hampton.

A second example is average time from case filing to first hearing. Arlington and Hampton – courts with small and large caseloads – are able to hold a first hearing within roughly one month of filing a child support petition. In contrast, Wise and Chesapeake – also courts with small and large child support caseloads – take roughly ten times that long. Ten months is an unreasonably long period of time for a custodial parent to have to wait for a hearing to establish or enforce payments from the non-custodial parent to support their child or children.

This demonstration has not served to bring the poorest performing pilot courts to the level of the best performing pilot courts or, even, to materially lessen the gap between them. During the demonstration, the time to first hearing for Chesapeake decreased by three percent. In order to match Hampton's performance, Chesapeake would have had to decrease its time to first hearing by 300 percent – 100 times its actual percentage decrease. Further, this same performance in the Wise court deteriorated during the pilot program.

Consequently, our major observation is how little improvement took place in the pilot courts compared to that which would have been possible, given the current performance of the best pilot courts in each of the five performance categories.

We recommend that the Office of the Executive Secretary (OES), Supreme Court of Virginia, and the Division of Child Support Enforcement (DCSE):

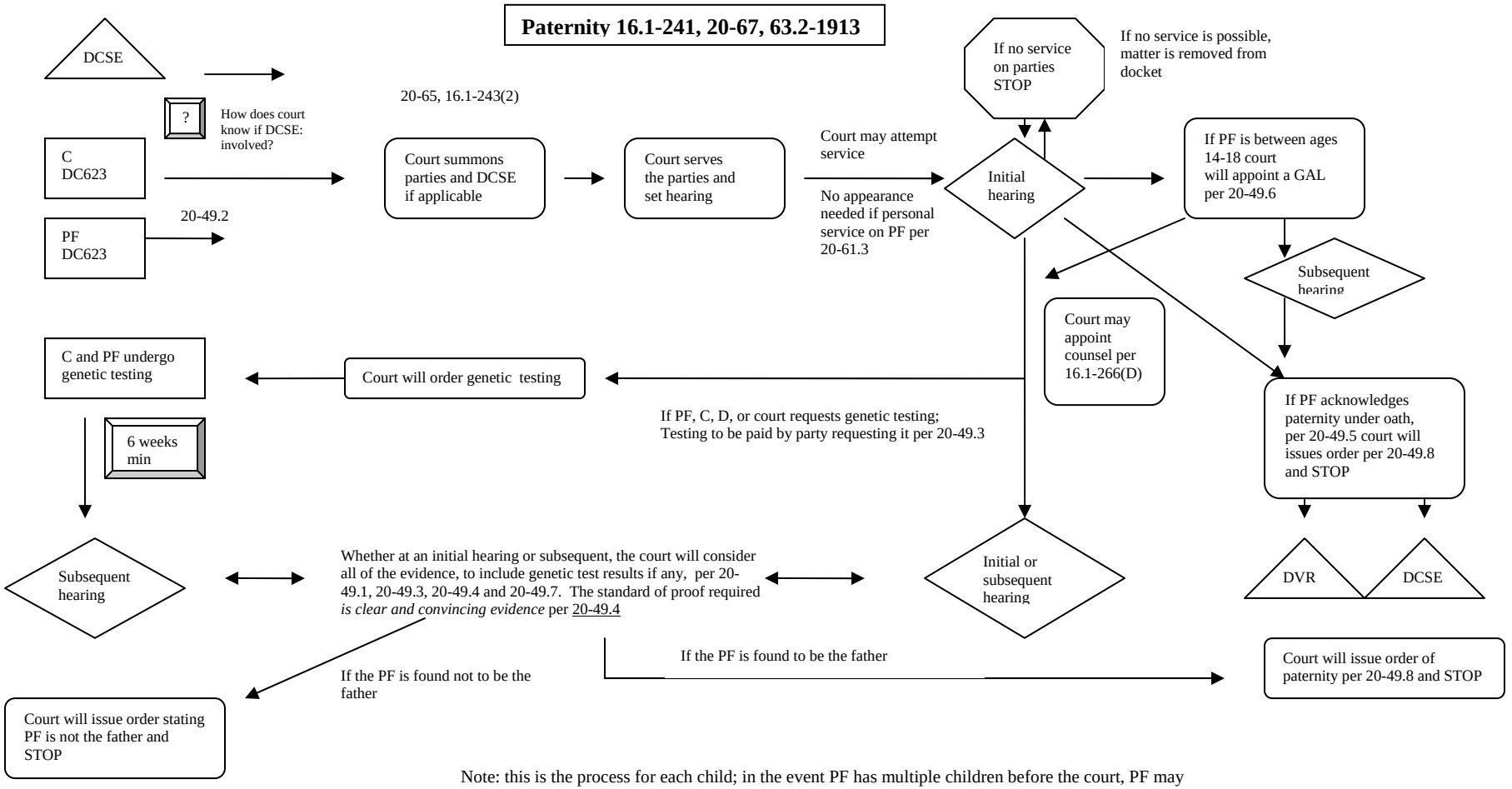
- Endorse the best practices developed by this demonstration project and strongly encourage all Juvenile & Domestic Relations District Courts to follow them; and

- Promulgate performance standards for filing time to first hearing and litigant waiting time, based on the demonstrated performance levels of the best pilot courts, or take other comparable steps to require the Juvenile and Domestic Relations District Courts of the Commonwealth to provide better service to child support litigants.

APPENDIX A

FLOW CHARTS FOR THE PRIMARY DIVISION OF CHILD SUPPORT ENFORCEMENT (DCSE) PROCESSES

KEY TO ABBREVIATIONS : C/CP= CUSTODIAL PARENT , N/NCP= NON-CUSTODIAL PARENT, PF= PUTATIVE FATHER, D= DEFENDANT, GAL=GARDIAN AD LITEM, DVR= DIVISION OF VITAL RECORDS PSA= PROPERTY SETTLEMENT AGREEMENT , RSC= RULE TO SHOW CAUSE CP REGARDING DISESTABLISHMENT §20-49.10, UIFSA=UNIFORM INTERSTATE FAMILY SUPPORT ACT



Note: this is the process for each child; in the event PF has multiple children before the court, PF may request genetic testing for all, some, or none; PF may acknowledge for all, some or none, etc.

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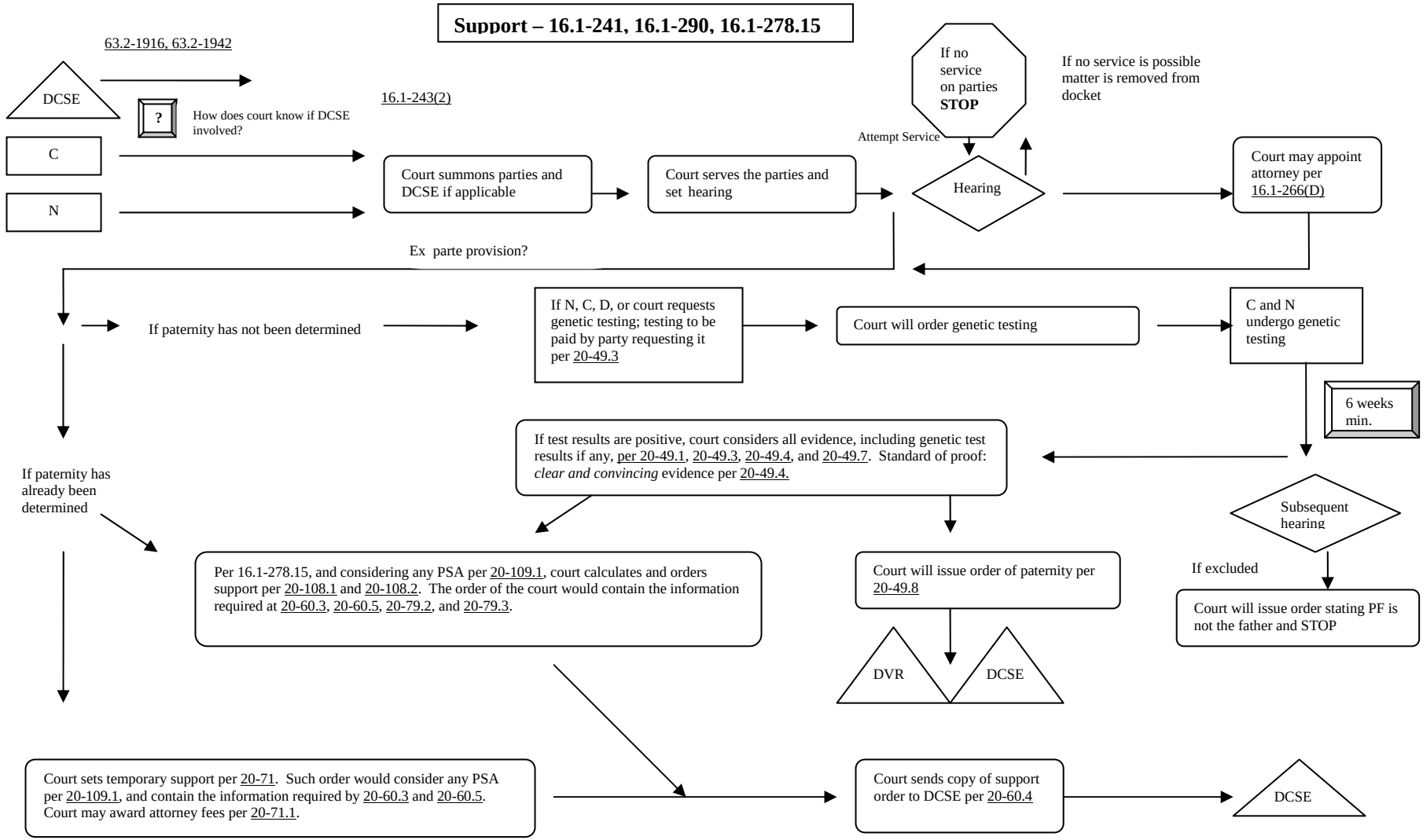

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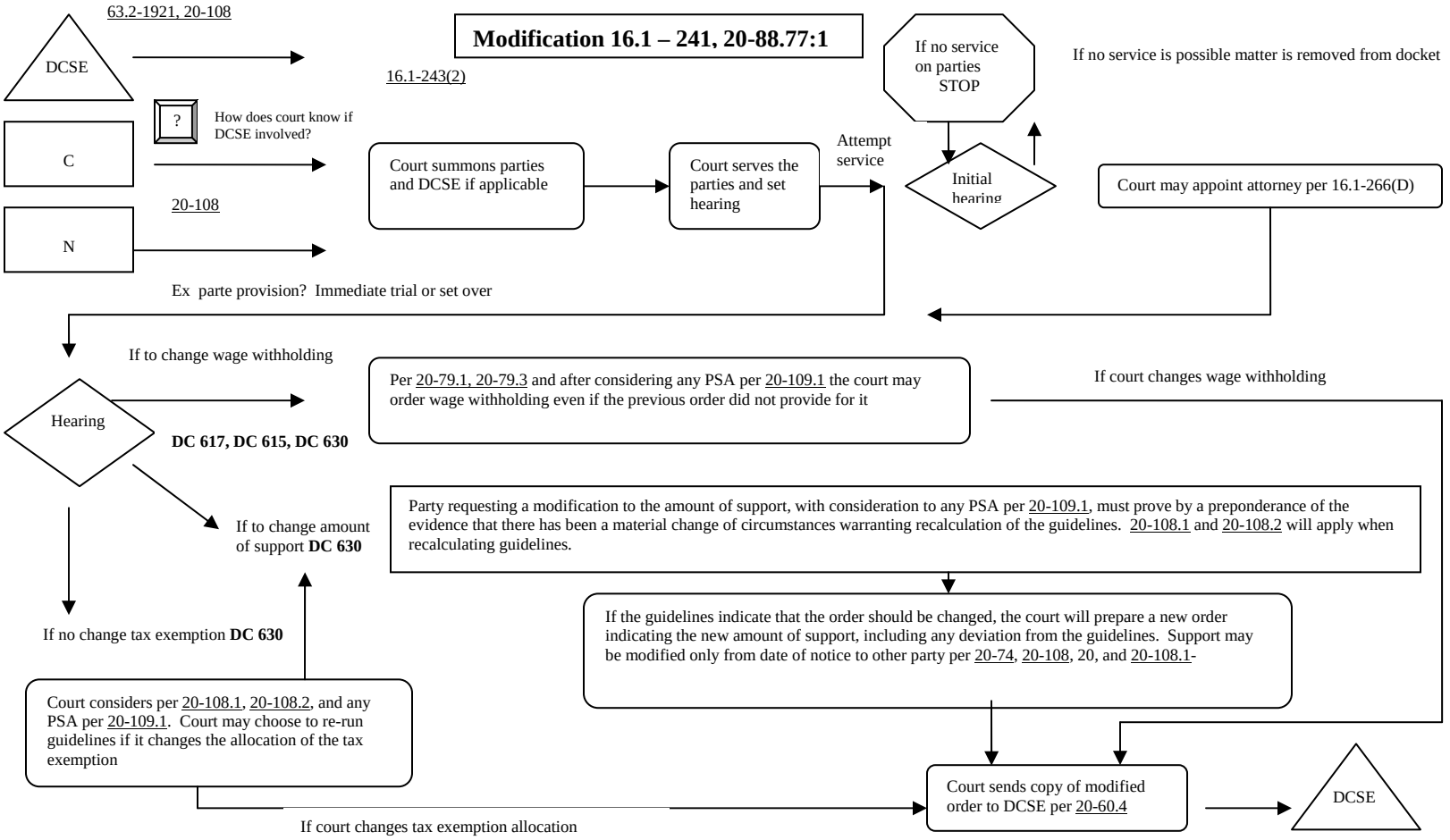

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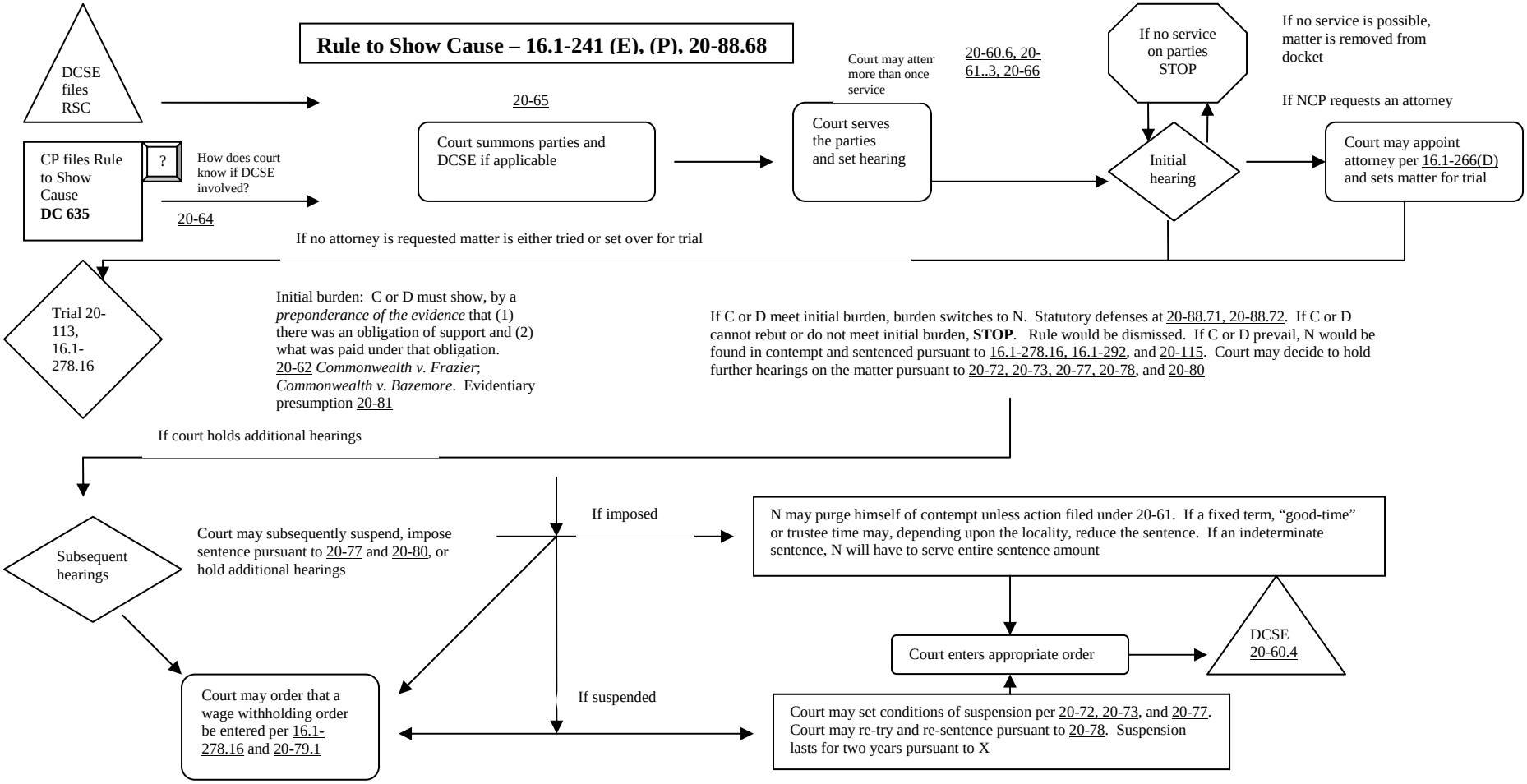

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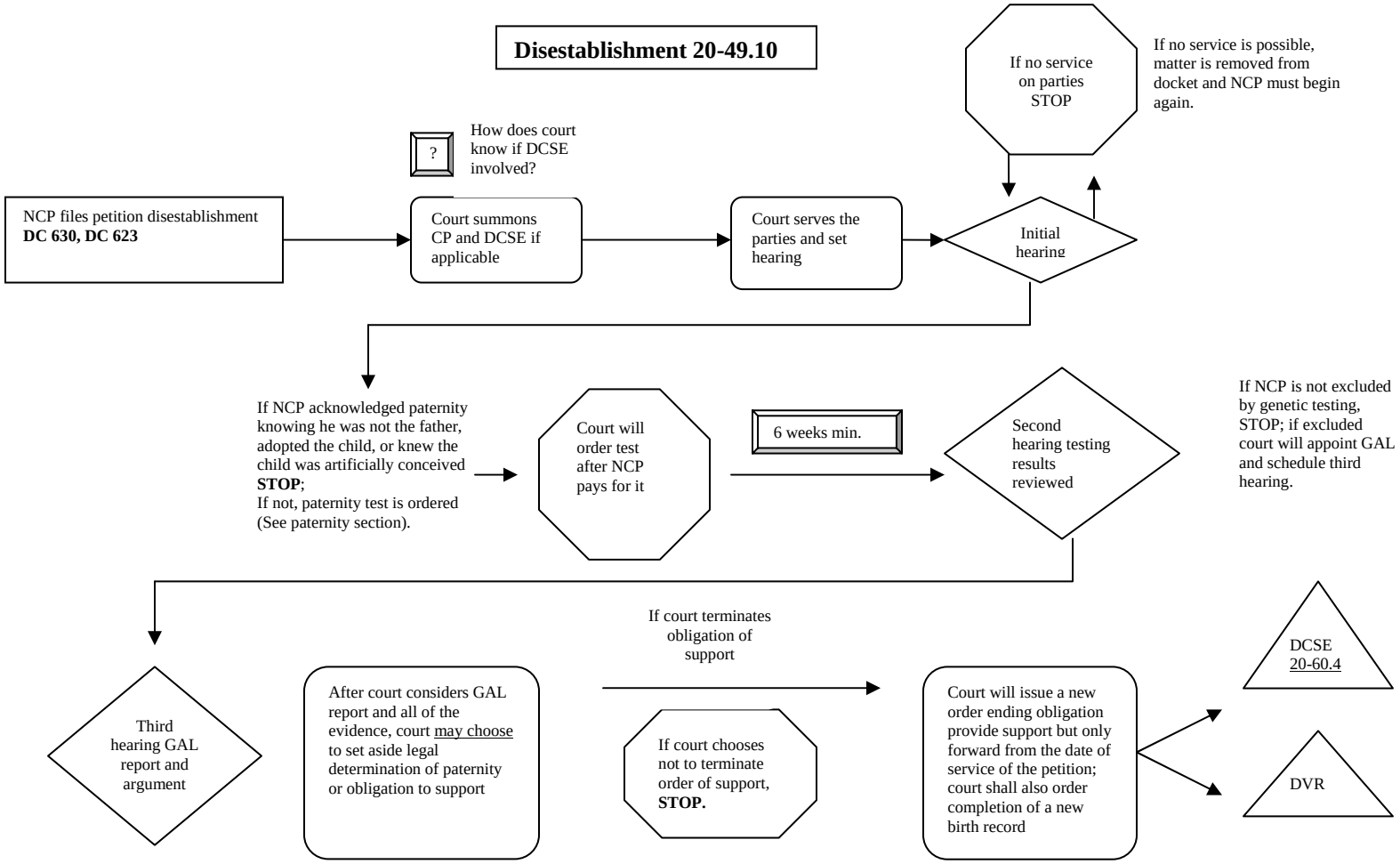

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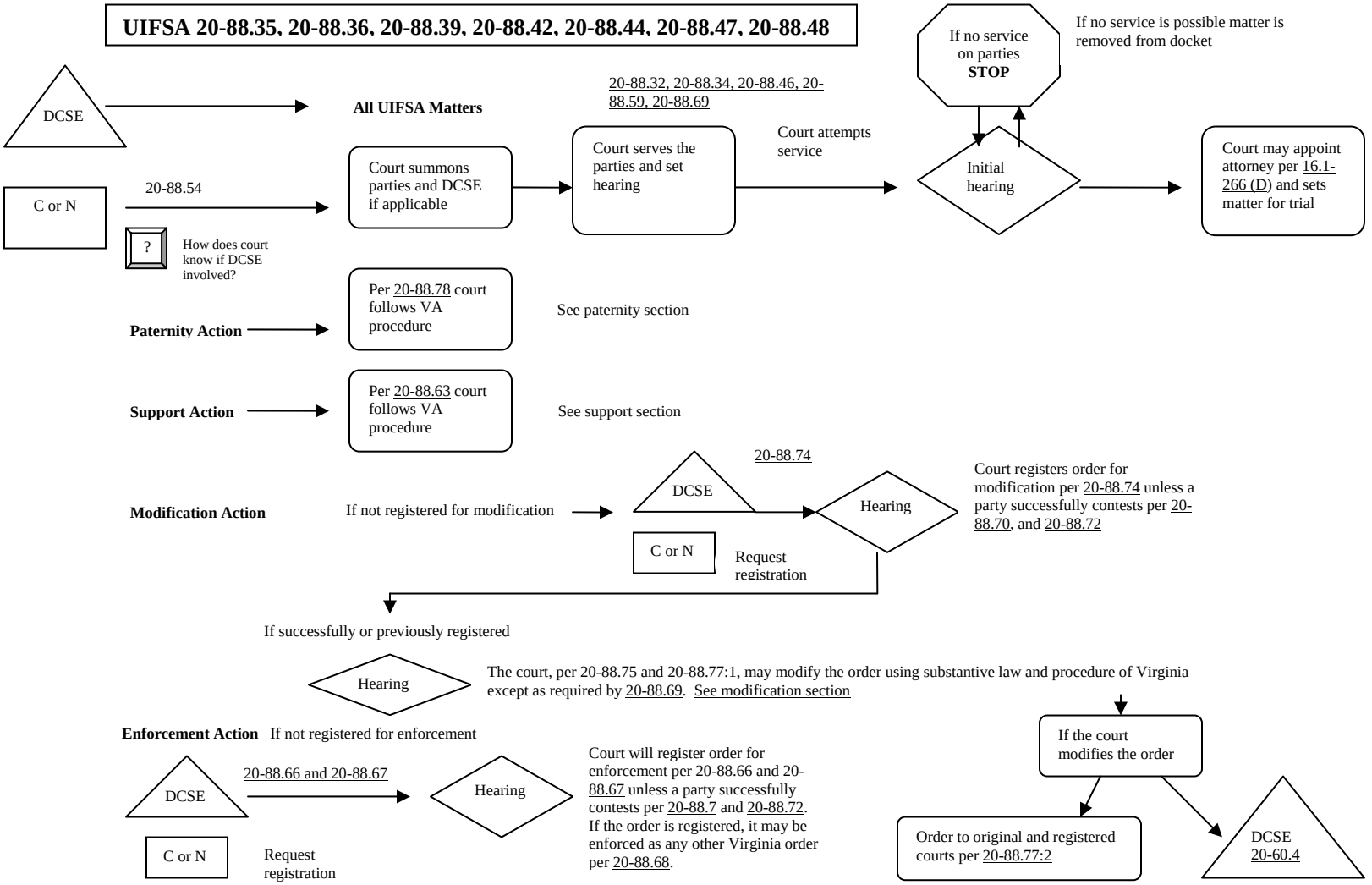

APPENDIX B:
TWO LEGAL NOTES AND
THE NATIONAL CENTER FOR STATE COURTS' WEB SITE ON PRO SE SUPPORT

The Pro Se Phenomenon

Drew A. Swank, Esq.

Why would anyone choose to go to court without a lawyer? It is a very simple question. In the varied host of television dramas, attorneys are always arguing the cases, not the parties. Only on reality/entertainment oriented shows like "Judge Judy" and the ilk do people argue their own cases, resulting more often than not in them being mocked, berated, and the law ignored.[10] These examples hardly serve as an incentive to do without counsel in litigation. Even our lexicon argues against proceeding pro se with the adage that "one who is his own lawyer has a fool for a client."[11]

The answer, however, is not quite so simple. In fact, while there is a great deal of anecdotal evidence as to why people represent themselves in court, there is extremely little real research into the issue.[12] Whether it is understood why people go to court without counsel, it is certainly perceived that more are doing so now than ever before. It is also perceived that people litigating their own cases are a problem: a problem for both them and our courts. This note examines the pro se phenomenon and offers some alternatives to these common perceptions regarding pro se litigants. By examining the amount of pro se litigation, the reasons why pro se litigants exists, and the implications for them and the rest of society, this note will suggest that the reason for pro se litigation is not as black and white as it is imagined to be.

Having pro se litigants in many of our courts throughout the United States is a reality. In "poor people courts" – the state courts that handle traffic, landlord/tenant, and child support or other domestic relations issues, the number of cases in which at least one side is pro se far outnumber those in which counsel represent both parties.[13] The number of unrepresented litigants in these types of cases has surged nationwide, especially in family law cases. Some

[10]*See, e.g.*, *A talent scout for TV courtroom?*, THE MORNING SUN ONLINE (Feb. 28, 1999) *at* www.morningsun.net/stories/022899/usw_0228990015.shtml.
[11]*See, e.g.*, Faretta v. California, 422 U.S. 806 (1975) (Blackmun, J., dissenting); Edward M. Holt, *How to Treat "Fools": Exploring the Duties Owed to Pro Se Litigants in Civil Cases*, 25 J. LEGAL PROF. 167, 172 (2001).
[12]Jonathan D. Rosenbloom, *Exploring Methods to Improve Management and Fairness in Pro Se Cases: a Study of the Pro Se Docket in the Southern District of New York*, 30 FORDHAM URB. L.J. 305, 310 (2002) (stating that there has been only one study that has examined federal pro se case data).
[13]Russell Engler, *And Justice for All - Including the Unrepresented Poor: Revisiting the Roles of Judges, Mediators, and Clerks*, 67 FORDHAM L. REV. 1987 (1999).

reports indicate that eighty to ninety percent or more of family law cases involve at least one pro se litigant.[14] While in many cases both sides will be unrepresented, in perhaps one-third or more of all litigation a pro se litigant is against a represented party.[15] Even more spectacular than the number of pro se litigants is the growth rate of pro se litigation. For instance, in 1971 only one percent of litigants in divorce cases in California were pro se.[16] By 1985, the rate had risen to forty-seven percent; currently the rate is approaching seventy-five percent.[17] Regardless of the exact percentages, pro se litigation rates have been growing at an exponential rate and many believe they are much higher now than ever before in our history.[18]

States courts are not alone in having more pro se litigants. In federal courts there has been an increase in the number of self-represented civil litigants, particularly in the areas of civil rights claims involving employment discrimination and fair housing issues.[19] One study of federal litigation found that pro se litigants appeared in thirty-seven percent of all cases, with the number of pro se appellants in federal appeals courts having increased by forty-nine percent in a two year period.[20] The presence of pro se civil litigants is not limited to trial courts. Each term, approximately 2,000 civil litigants file a petition for a writ of certiorari with the Supreme Court

[14]*Id.* at 2047; Bonnie Rose Hough, *Description of California Court's Programs for Self-Represented Litigants*, prepared for the meeting of the International Legal Aid Group, Harvard University (2003) *at* www.unbundlelaw.org/Program%20Profiles/California%20SRL%20Projects.pdf; Margaret Martin Barry, *Accessing Justice: Are Pro Se Clinics a Reasonable Response to the Lack of Probono Legal Services and Should Law School Clinics Conduct Them?*, 67 FORDHAM L. REV. 1879, 1884 (1999) (citations omitted) (reporting the results of an Arizona study that found approximately ninety percent of divorce cases involved at least one pro se litigant and in fifty-two percent of divorce cases both parties were pro se).
[15]Engler, *supra* note 4, at 2048.
[16]Hough, *supra* note 5; Jona Goldschmidt, *Pro Se Litigant's Struggle for Access to Justice: Meeting the Challenge of Bench and Bar Resistance*, 40 FAM. CT. REV. 36 (2002).
[17]Frances L. Harrison et al., *Courts Responding to Communities: California's Family Law Facilitator Program: A New Paradigm for the Courts*, 2 J. CENTER CHILDREN & CTS. 61 (2000) (citations omitted).
[18]Hough, *supra* note 5; Paul D. Healey, *In Search of the Delicate Balance: Legal and Ethical Questions in Assisting the Pro Se Patron*, 90 LAW LIBR. J. 129, 132 (1998); Candice K. Lee, *Access Denied: Limitations on Pro Se Litigants' Access to the Courts in the Eighth Circuit*, 36 U.C. DAVIS L. REV. 1261, 1280 (2003) (citations omitted) (referring to the increase as a "floodtide"); Engler, *supra* note 4; John M. Greacen, *Self Represented Litigants and Court and Legal Services Responses to Their Needs: What We Know* 1 (July 20, 2002) (on file with author) (referring to the increase as an "explosion"). *But see id.* at 4 (citing data that suggests that the numbers of pro se litigants are not increasing, but rather remaining constant in those cases in which pro se litigants are common – domestic relations, domestic violence, child support, traffic, and landlord/tenant).
[19]Tiffany Buxton, *Foreign Solutions to the U.S. Pro Se Phenomenon*, 34 CASE W. RES. J. INT'L L. 103, 105 (2002); Holt, *supra* note 2, at 167.
[20]Buxton, *supra* note 10, at 112 (citations omitted).

of the United States, with only five percent actually being heard and decided by the court.[21] Rarely is a pro se petition for a writ of certiorari granted.[22] Some argue that this represents bias by the Supreme Court against pro se litigants and therefore against the poor; others respond that it demonstrates merely that most of the issues being raised by pro se litigants do not meet the review criteria of the court.[23]

Unfortunately, the need for legal counsel in litigation has increased at the same time more parties are representing themselves in court.[24] In the last sixty years, legal services "have become more of a necessity and less of a luxury when compared to the past."[25] Popular opinion holds that the reason for the increase in pro se litigation is the cost of attorneys and litigation.[26] While in many cases both sides will be unrepresented, in perhaps one-third or more of all litigation a pro se litigant is against a represented party.[27] The inability of a large portion of American society to afford attorney assistance has been "deemed one of the glaring failures of our system, straining the principle of equal justice under the law."[28] The perceived result is that pro se litigants are reluctant participants in the legal system.[29]

These popular opinions, however, might be wrong. In one survey, forty-five percent of pro se litigants stated that they chose to represent themselves because their case was simple, not because they could not afford an attorney.[30] Only thirty-one percent stated they were pro se because they could not afford to retain counsel.[31] Almost half implied that they had the

[21]Kevin H. Smith, *Justice for All?: the Supreme Court's Denial of Pro Se Petitions for Certiorari*, 63 ALB. L. REV. 381, 382 (1999).
[22]*Id.*
[23]*See id.* at 381 (analyzing why the Supreme Court accepts or declines cases).
[24]Buxton, *supra* note 10, at 111. *See also* Raul V. Esquivel, III, *The Ability of the Indigent to Access the Legal Process in Family Law Matters*, 1 LOY. J. PUB. INT. L. 79, 80 (2000) (noting that the increase in domestic relations cases is out of proportion to the increase in the population).
[25]Buxton, *supra* note 10, at 111.
[26]Goldschmidt, *supra* note 7; Harrison et al., *supra* note 8; Esquivel, *supra* note 15, at 85 (stating that the cost of litigation prevents many matters that need to be litigated from coming to court); Julie M. Bradlow, *Procedural Due Process Rights of Pro Se Civil Litigants*, 55 U. CHI. L. REV. 659, 669-70 (1988) (citations omitted); Barry, *supra* note 5, at 1884 (citations omitted); Lee, *supra* note 9, at 1280-81; Buxton, *supra* note 10, at 111; Healey, *supra* note 9, at 133 (stating most commentators would agree that the majority of individuals are pro se due to an inability to afford counsel); Joseph M. McLaughlin, *Note: an Extension of the Right of Access: the Pro Se Litigant's Right to Notification of the Requirements of the Summary Judgment Rule*, 55 FORDHAM L. REV. 1109, 1132-33 (1987).
[27]Engler, *supra* note 4, at 2048.
[28]McLaughlin, *supra* note 17, at 1132-33.
[29]*See generally* Holt, *supra* note 2.
[30]Jona Goldschmidt, Cases and Materials on Pro Se Litigation and Related Issues, remarks prepared for the ABA Lawyers' Conference Annual Meeting, Tucson, Arizona, May 1-4, 1997, *available at* http://www.pro-selaw.org/pro-selaw/research.asp (last visited June 5, 2004) (citations omitted). *See also* Greacen, *supra* note 9, at 3.
[31]*Id.*

necessary funds to hire an attorney, but chose not to.[32] There are many reasons for the growth of pro se litigation other than the cost of securing legal assistance. Some of the reasons cited in various surveys include:

- increased literacy rates,[33]
- increased sense of consumerism,[34]

- increased sense of individualism and belief in one's own abilities,[35]
- an anti-lawyer sentiment,[36]
- a mistrust of the legal system,[37]

- a belief that the public defender in criminal cases is overburdened,[38]
- a belief that the court will do what is right whether the party is represented or not,[39]
- a belief that litigation has been simplified to the point that attorneys are not needed,[40]
- and as a trial strategy designed to gain either sympathy[41] or a procedural advantage over represented parties.[42]

Still another reason why individuals are pro se is that they are *advised* to proceed on their own. According to one survey in Idaho, thirty-one percent of pro se litigants consulted counsel before trial and were advised that their case was either simple enough or by virtue of being uncontested that they did not need an attorney.[43] Some pro se litigants, based upon repeated experiences with the legal system, may actually be able to represent themselves better in court than with counsel.[44] In some rural locations, even if a litigant wishes to hire an attorney there may be none to be

[32]Goldschmidt, *supra* note 22. *But see* Engler, *supra* note 4, at 2027 (stating that while some litigants who could afford counsel refrain from doing so, the notion that most litigants choose to forego legal representation is fictitious in many contexts).
[33]Goldschmidt, *supra* note 7.
[34]*Id.*
[35]*Id.*; Healey, *supra* note 9 (citations omitted).
[36]Goldschmidt, *supra* note 7; Bradlow, *supra* note 17, at 661-62; Greacen, *supra* note 9, at 3 (citations omitted); Healey, *supra* note 9 (citations omitted).
[37]Eric J.R. Nichols, *Preserving* Pro Se *Representation in an Age of Rule 11 Sanctions*, 67 TEX. L. REV. 351, 380 (1988).
[38]Bradlow, *supra* note 17, at 661-62.
[39]*Id.*; Healey, *supra* note 9, at 133 (citations omitted).
[40]Healey, *supra* note 9 (citations omitted).
[41]Bradlow, *supra* note 17, at 661-62.
[42]Healey, *supra* note 9, at 133 (citations omitted).
[43]Frances H. Thompson, *Access to Justice Conference September 11, 2001: Access to Justice in Idaho*, 29 FORDHAM URB. L.J. 1313, 1316 (2002).
[44]Healey, *supra* note 9, at 133 (citations omitted).

found.[45] Likewise, there are some areas of the law in which very few attorneys practice, such as landlord tenant disputes and certain family law issues, resulting in pro se litigants.[46] Absent dictating to attorneys where they can live and what type of law they will practice, this situation is unlikely to change anytime soon. Although Judge Posner's position in *Merritt v. Faulkner* was severely criticized both in the opinion and subsequently, it has some truth to it: for certain types of cases in which there is potential for a large judgment – such as personal injury or medical malpractice – and a high probability of success, the market will more often than not provide attorneys to represent those plaintiffs.[47] The market clearly would not help litigants where there is no profit motive, such as with defendants in general or plaintiffs in unprofitable cases where only injunctive or declaratory relief is sought.[48]

Another reason for the lack of supply to meet the demand is the failure of mechanisms to provide legal assistance to those who need it at low- or no-cost. Legal assistance can come from three sources: the government or private sector in the form of legal services programs, the courts in the form of court-appointed counsel, or the bar. All of these programs, offering traditional, full-service legal representation at no- or very low-cost to the litigant, have all fallen short of meeting the demand.[49] Both governmentally and privately funded legal service programs lack resources to help many civil litigants even though they would otherwise be eligible for assistance.[50] Only a small fraction get assistance, and the assistance they receive is minimal – usually only brief advice and not the full-service legal representation that they need.[51] Family law issues alone account for approximately one-third of all requests for legal services among low-income persons throughout the United States.[52]

Prior to the 1960's, there was very little government assistance for representation in civil litigation.[53] Recently it has gotten worse. Over the last two decades federal funding of legal

[45]Thompson, *supra* note 35, at 1315; Harrison et al., *supra* note 8.
[46]Thompson, *supra* note 26, at 1315 (2002); Engler, *supra* note 4, at 2016 (citing the shortage of available lawyers for the poor).
[47]Merritt v. Faulkner, 697 F.2d 761 (7th Cir. 1983); Merritt v. Faulkner, 823 F.2d 1150 (7th Cir. 1987).
[48]Lee, *supra* note 9, at 1280-81; Bradlow, *supra* note 17 (citations omitted).
[49]Harrison et al., *supra* note 8.
[50]Nichols, *supra* note 29, at 384 (citations omitted).
[51]Deborah L. Rhode, *The Social Responsibility of Lawyers: Equal Justice Under Law: Connecting Principle to Practice*, 12 WASH. U. J.L. & POL'Y 47, 54 (2003).
[52]Barry, *supra* note 5, at 1879 (citing Jane C. Murphy, *Access to Legal Remedies: The Crisis in Family Law*, 8 BYU J. PUB. L. 123, 124 (1993)).
[53]Buxton, *supra* note 10, at 105-106; Caroline Durham, *Law Schools Making a Difference: An Examination of Public Service Requirements*, 13 LAW & INEQ. 39, 40 (1994) (noting the importance of legal clinics and that the demand for their services outstrips the supply). *See also* Barry, *supra* note 5. Ms. Barry writes that the Economic Opportunity Act of 1964 instituted the first federally supported legal services program for the poor. Prior to 1964, there were about 150 legal aid societies in the United States employing 600 lawyers with a combined budget of $4 million; within a few years of the Act's passage, that number grew to over 2500 lawyers with a budget in excess of $60 million. *Id.*

service programs has been cut by a third while greater restrictions have been placed on the types of cases and clients government-funded programs can help.[54] The lack of funding has resulted in four-fifths of the legal needs of the poor and two- to three-fifths of the legal needs of the middle class being unmet.[55] The net result is that there is only one lawyer available to serve approximately 9,000 low-income persons,[56] and in the mid-1990's approximately 9.1 million Americans' legal needs were unmet.[57] It has been estimated that it would take three to four billion dollars a year to meet merely the minimal civil legal needs of low-income Americans; ten-times the $300 million now being spent.[58]

Other means of providing legal services to the poor have likewise failed. Except in very limited circumstances, courts routinely decline to provide court-appointed counsel in civil cases.[59] While courts can appoint counsel for a variety of reasons, often they do not.[60] With state budgets in crisis, the states and courts have little incentive to use what funds they have to provide counsel in civil cases.[61] Surveys indicate that the vast majority of the public favors legal representation for the poor, but only if it does not cost the taxpaying public anything.[62] The majority of respondents prefer legal assistance from volunteer attorneys and not government subsidies, and forty percent want only advice provided, not representation in litigation.[63] It is important to note that "[a]lmost four-fifths of Americans incorrectly believe that the poor are now entitled to legal aid in civil cases, and only a third thinks that they would have a difficult time obtaining assistance."[64]

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[54]Rhode, *supra* note 42, at 50; Buxton, *supra* note 10, at 105-106.
[55]Rhode, *supra* note 42; Engler, *supra* note 4.
[56]Rhode, *supra* note 42.
[57]Barry, *supra* note 5, at 1885.
[58]Rhode, *supra* note 42, at 50.
[59]*Id.* at 55.
[60]*Id.*, at 49-50; Nichols, *supra* note 29, at 384 (citations omitted).
[61]*See* Jeffrey Cohan, *Alleghany County's legal defense fund runs dry*, POST-GAZETTE.COM, Aug. 20, 2002, *at* http://www.post-gazette.com/localnews/20020820defense0820p2.asp; Eric Bartels, *Protest arrests may clog courts*, PORTLAND TRIBUNE, Mar. 28, 2003 *at* http://www.portlandtribune.com/archview.cgi?id=17336 (stating that the state budget crisis has resulted in elimination of court days and delayed trials for months). *See generally* David M. Herszenhorn, *How Did Such a Rich State Get So Poor?*, N.Y. TIMES, Dec. 22, 2002 *at* http://www.ccsu.edu/aaup/csu/herszenhornarticle.htm; Jeffrey L. Rabin, *State Spent Its Way Into Budget Crisis*, L.A. TIMES.COM, Oct. 29, 2002 *at* www.caltax.org/LATimes-StateSpentWayIntoBudgetCrisis10-29-02.pdf; Robert Sandler, *State lawmakers are calling this the worst budget in years*, MISSOURI DIGITAL NEWS, Mar. 1, 2002, *at* http://www.mdn.org/2002/Stories/Budget3.htm.
[62]Rhode, *supra* note 42, at 53.
[63]*Id.*
[64]*Id.*

APPENDIX B:
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The private bar, however, has also failed in providing assistance to those who cannot afford legal representation.[65] "State supreme courts have adopted only aspirational standards, coupled in a few jurisdictions with occasional court assignments or mandatory reporting systems. Yet, most lawyers have failed to meet these aspirational goals, and the performance of the profession as a whole remains at a shameful level."[66] As one commentator noted:

> [R]ecent surveys indicate that most lawyers provide no significant pro bono assistance to the poor. In most states, fewer than a fifth of lawyers offer such services. The average pro bono contribution is under half an hour a week and half a dollar a day . . . Fewer than a fifth of the nation's 100 most financially successful firms meet the ABA's standard of providing fifty hours a year of pro bono service. Over the past decade, when these firms' revenues grew by over fifty percent, their average pro bono hours decreased by a third. For many other employers, salary wars have pushed compensation levels to new heights, which has eroded, rather than expanded, support for pro bono programs.[67]

The small amount of pro-bono work currently being provided has done little to relieve the need for legal services.[68]

Despite these various mechanisms to provide legal assistance to the poor, according to a report of the American Bar Association, seventy to eighty percent or more of low-income persons are unable to obtain legal assistance when they need and want it.[69] Money is the key, and not just for the individual with the legal problem. Legal aid societies lack the funding to provide more services to more individuals. Courts lack the funds to appoint counsel to represent litigants except in mandatory or unusual cases. Private attorneys lose money by providing pro bono services. While the lack of money at a variety of levels may be the cause of the problem, the effect of the lack of a cohesive means for low- and middle-income individuals to have legal representation is that they do not resolve their legal issues, abandon their rights, or try to do it on their own. Those who represent themselves normally have no access to any sort of professional legal advice to help them do it.[70]

Access to legal counsel, however, is just one aspect of the problem. According to another American Bar Association survey, the legal issues of less than thirty percent of low-income

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[65] *Id.* at 59.
[66] *Id.*
[67] *Id.* at 59-60 (citations omitted).
[68] Barry, *supra* note 5, at 1884-85.
[69] Alex J. Hurder, *Nonlawyer Legal Assistance and Access to Justice*, 67 FORDHAM L. REV. 2241 (1999) (citations omitted). *See also* Barry, *supra* note 5.
[70] Esquivel, *supra* note 15, at 93.

households and forty percent of moderate-income households are brought to the justice system whether or not legal counsel is involved.[71] While these individuals could bring their problems to court themselves, there are multiple reasons why they do not. These include:

- the belief that legal intervention would not help,
- concerns about the cost even without attorneys,
- the belief that the problem was not serious or "legal" enough to take to court,
- the desire to avoid confrontation,
- and the desire to handle the problem on their own.[72]

For these individuals, the justice system as a whole is not a viable means of conflict resolution.

As previously shown, there will always be individuals who wish to have counsel and cannot afford it and there will likewise always be individuals who choose to proceed pro se.[73] The fact that some pro se litigants choose to represent themselves, however, is not to suggest that the cost of litigation and attorneys is not a barrier for many of the poor from participating in the judicial process. For individuals living paycheck to paycheck, getting paid only for the hours they work, the ability to attend hours of court hearings is as much out of their reach as the money needed to hire an attorney. The cost of litigation and attorneys is certainly a significant, but not solitary, reason for pro se litigants. By the same token, no matter how much funding legal aid organizations have or how many pro bono hours attorneys donate, there will be some individuals who will want to litigate pro se.

Regardless if a person wants to represent himself in court, he or she normally has the opportunity to do so. Historically, the right in the United States to represent oneself in court dates to the founding of our country.[74] Having its roots in the British common law,[75] the right to represent oneself evolved as a combined proposition of "natural law," an early anti-lawyer sentiment,[76] and the egalitarian "all men are created equal" concept that "financial status should not have a substantial impact on the outcome of litigation."[77] The American legal ideal is that both the wealthy and the pauper could have access to the courts, and be treated equally before it with the resulting decisions being as fair as possible.[78] The development of pro se rights in the

[71]Barry, *supra* note 5, at 1883-84 (citations omitted).
[72]*Id.*
[73]Thompson, *supra* note 35.
[74] Holt, *supra* note 2, at 168; Goldschmidt, *supra* note 22.
[75]Buxton, *supra* note 10, at 107; Nichols, *supra* note 29, at 379-80 (citations omitted).
[76]Goldschmidt, *supra* note 22.
[77]Buxton, *supra* note 10, at 109.
[78]*Id.* at 111.

United States has been tied with the rights of indigents to have access to the courts.[79] Open access to the courts for all citizens has also been viewed as being important for the development of law and public policy and the avoidance of citizens' resorting to non-judicial self-help.[80]

The Judiciary Act of 1789 was an early codification of this belief. It granted "parties the right to 'plead and conduct their own case personally' in any court of the United States."[81] Many states, either through their constitutions or statutorily, also provide individuals with the right to proceed pro se.[82] It is unclear, however, if there is a *right* to self-representation pursuant to the Constitution of the United States.[83] The Sixth Amendment guarantees criminal defendants the right to have assistance of counsel; by implication the Amendment has served as a basis to hold that criminal defendants can waive that right and appear pro se.[84] Additionally, the First, Fifth, and Fourteenth Amendments have served as support for the right of individuals to have access to the courts without being represented.[85] Whatever right there is to proceed pro se, however, has not been extended by the Supreme Court to civil cases.[86] While federal and state courtroom procedures have been modified to accommodate the right to proceed pro se in criminal procedures, there have been few changes to accommodate pro se litigants in civil cases even though the number of civil pro se cases has risen considerably.[87]

Not having representation can negatively affect both the litigant and others. Whether the individuals chose to be pro se, they are many times negatively perceived. Pro se litigants are "most often attacked for the judicial inefficiencies many judges, attorneys, and observers believe they create. Pro se litigants are more likely to neglect time limits, miss court deadlines, and have problems understanding and applying the procedural and substantive law pertaining to their claim."[88] Routinely they are described as '"pests,' 'nuts,' 'an increasing problem,' 'clogging our judicial system.'"[89] They are thought of as being underprivileged, uneducated,[90] and almost

[79]*Id*. at 103.
[80]Nichols, *supra* note 29, at 379-80 (citations omitted).
[81]*See generally* Buxton, *supra* note 10, at 109-10; Bradlow, *supra* note 17, at 660-61; Holt, *supra* note 2, at 168. This privilege continues today as codified in 28 U.S.C. § 1654 (2004).
[82]Lee, *supra* note 9, at 1265-66; Bradlow, *supra* note 17, at 660-61.
[83]*See* McLaughlin, *supra* note 17; Lee, *supra* note 9, at 1265.
[84]Bradlow, *supra* note 17, at 660-61; Holt, *supra* note 2, at 168; Goldschmidt, *supra* note 22. *See Faretta v. State of California*, 422 U.S. 806, 816 (1975).
[85]Nichols, *supra* note 29, at 379-80 (citations omitted).
[86]*Id*. at 379 (citations omitted); Rhode, *supra* note 42, at 49-50; Lee, *supra* note 9, at 1280-81 (citations omitted) (stating indigents do not have a right to counsel for civil matters).
[87]Buxton, *supra* note 10.
[88]*Id.*, at 114 (citations omitted); Barry, *supra* note 5, at 1894.
[89]Rosenbloom, *supra* note 3, at 381.
[90]McLaughlin, *supra* note 17, at 1118.

certainly "lack . . . both the skill and knowledge adequately needed to prepare their defense."[91] They are believed to be unduly burdensome on judges, clerks, and court processes, [92] with many pro se litigants requiring additional time at the clerk's office and in the courtroom because they do not understand the procedures or the limitations of the court.[93] Some pro se litigants may clutter up cases with rambling, illogical pleadings, motions, and briefs.[94] Some lawyers and judges even express concerns that pro se litigants are using their status to gain an unfair advantage over represented parties, who are required to "play by the rules."[95] The problems of pro se litigants in New York's Housing Court are so vast that they have led to periodic calls for the elimination of that court entirely.[96]

As with most issues, there are two competing visions of the pro se issue: on one hand, the pro se litigant is viewed as the poor person who cannot afford counsel and is therefore unable to participate in the hyper-technical procedural maze of the modern judicial system; while on the other hand the pro se litigant is perceived as a nut who files rambling, illogical law suits to settle personal vendettas and advance his or her own social and political agenda.[97] This negative perception of pro se litigants, however, has not been objectively studied or documented. Nor is there extensive statistical research to support the perceived negative effect pro se litigants supposedly have on our courts.[98] While "[t]he image of the inexperience of a pro se litigant creating dilemmas and frustrations during a trial or hearing has a basis in reality" the data from what studies are available suggest that this picture is not the norm.[99] In one study that compared pro se versus represented-party cases, represented cases were the most time consuming and had the most docket entries.[100] Additionally, pro se cases were being settled at virtually the same rate as with represented parties, again belying the notion that pro se cases always go to trial and do not settle.[101]

Pro se litigants, in many courts, have become the norm. While undoubtedly there needs to be greater efforts to provide legal assistance – whether through legal aid organizations or pro bono work by the bar – there are individuals who for a variety of reasons will choose to proceed pro se. This pro se phenomenon creates several competing issues for the courts and our justice

[91]Holt, *supra* note 2.
[92]Engler, *supra* note 4, at 2050-51; Greacen, *supra* note 9.
[93]Hough, *supra* note 5.
[94]Nichols, *supra* note 29.
[95]Engler, *supra* note 4.
[96]*Id*. at 2065.
[97]Nichols, *supra* 29.
[98]Rosenbloom, *supra* note 3, at 312-14.
[99]Greacen, *supra* note 9, at 11 (citations omitted).
[100]Rosenbloom, *supra* note 3, at 358-59.
[101]Buxton, *supra* note 10, at 145-46.

system. There is a need to provide individuals who cannot afford or do not desire representation to have meaningful access to the courts, while at the same time protecting the ability of the courts to provide impartial and timely justice.[102] If having pro se litigants creates problems for our courts, the solution is not to eliminate their ability to represent themselves, but rather concerted efforts to study and address the underlying issues and mechanisms relating to how pro se litigants interact with the court.

Pro Se Assistance Programs – An Overview

Drew A. Swank, Esq.

Pro se assistance programs and courts designed primarily for the self-represented are not necessarily a new phenomenon. In 1921, California created a Small Claims Court designed for individuals to litigate their cases themselves without an attorney; in 1978 the state created the Small Claims Advisor Program to provide free assistance to pro se litigants in these small claims court.[103] Since then, California and other states have created a variety of approaches of assisting pro se litigants through the creation of pro se assistance centers and programs, offering differing levels of service.[104] Legal consumers are, for a variety of reasons, needing to or choosing to handle more legal tasks on their own.[105] Pro se assistance programs are the response to this trend. Whether government or privately funded, pro se assistance efforts, despite any variation in detail and structure, can be grouped into two basic categories: those designed to provide legal advice and those designed to provide assistance short of legal advice.[106] This note examines the basic principles of both types of pro se assistance efforts, their goals, and the problems or concerns that can be created by such efforts. For organizations that are creating their own pro se assistance effort, understanding these aspects will assist in designing a program that achieves the goals of pro se assistance, while avoiding the problems or concerns associated with them.

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[102]Harrison et al., *supra* note 8, at 70.

[103]Bonnie Rose Hough, *Description of California Court's Programs for Self-Represented Litigants,* prepared for the meeting of the International Legal Aid Group, Harvard University (2003) *at* www.unbundlelaw.org/Program%20Profiles/California%20SRL%20Projects.pdf. By California statute, each county in California must provide some sort of assistance to pro se litigants before its courts. *Id.*

[104]*See, e.g.*, Margaret Martin Barry, *Accessing Justice: Are Pro Se Clinics a Reasonable Response to the Lack of Probono Legal Services and Should Law School Clinics Conduct Them?* 67 FORDHAM L. REV. 1879, 1892-93 (1999) (describing Maricopa County (Arizona) Superior Court's self-help center which aids approximately 400 people per day); Frances H. Thompson, *Access to Justice Conference September 11, 2001: Access to Justice in Idaho*, 29 FORDHAM URB. L.J. 1313, 1319 (2002) (describing how Idaho created Court Assistance Offices in each judicial district to provide assistance in family law matters).

[105]Michael Robertson & Jeff Giddings, *Legal Consumers as Coproducers: The Changing Face of Legal Service Delivery in Australia*, 40 FAM. CT. REV. 63 (2002).

[106]Russell Engler, *And Justice for All - Including the Unrepresented Poor: Revisiting the Roles of Judges, Mediators, and Clerks*, 67 FORDHAM L. REV. 1987, 2001-2002 (1999).

APPENDIX B:
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Assistance Short of Legal Advice

Providing legal information to pro se litigants increases their chances of success both in- and out-of-court.[107] In designing a pro se assistance program that is to provide information, and not advice, there are two basic questions: what information will be provided, and how will it be provided.

What Information to Provide

An effective pro se assistance program should provide three types of information: how to bring an issue before the court, how the matter is processed before the court, and what to do after court in order to either comply with or enforce the court's order.[108]

The information needed regarding how to bring an issue before the court takes two basic forms: an overview of the court system and the forms needed to start the process.[109] The overview lets the pro se litigant know what a particular court can and cannot do. By describing the jurisdiction of the court, it can ensure that the pro se litigant goes to the right court the first time, helping both them and the court.[110] The overview should also describe the litigation process, providing information about average case lengths, filing times, and the average number of court appearances for each type of case.[111] It also should inform the pro se litigant of the court's expectations of them.[112] Finally, the overview should describe alternatives to litigation.[113]

Providing simply-written, court-approved forms, completed samples, and clearly-written instructions is perhaps one of the most important functions a pro se assistance program can serve.[114] The best, most cost-effective programs not only provide clear, complete forms but also written, video, or interactive directions that are easy to understand and in the required

[107]Candice K. Lee, *Access Denied: Limitations on Pro Se Litigants' Access to the Courts in the Eighth Circuit,* 36 U.C. DAVIS L. REV. 1261, 1282 (2003).
[108]Richard Zorza, *The Self-Help Friendly Court: Designed from the Ground Up to Work for People Without Lawyers* 17 (2002) (on file with author).
[109]*Id.*
[110]*Id.*
[111]Paula L. Hannaford-Agor, *Helping the Pro Se Litigant: A Changing Landscape,* 2003 CT. REV. 8, 14-15; Zorza, *supra* note 6.
[112]Hannaford-Agor, *supra* note 9, at 15.
[113]Zorza, *supra* note 6.
[114]*See generally* Barry, *supra* note 2, at 1892; ELEANOR LANDSTREET & MARIANNE TAKAS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, DEVELOPING EFFECTIVE PROCEDURES FOR PRO SE MODIFICATION OF CHILD SUPPORT AWARDS 31 (1991); John M. Greacen, *Legal Information vs. Legal Advice: Developments during the last five years,* 84 JUDICATURE 198 (2001).

languages.[115] Ultimately, forms should be web-based with pull-down options and able to be completed on-line.[116] Forms should be designed to be user friendly, providing information not only on how to complete them, but what to do when a person receives one as well. For example, the pleading form should have information about where to go for help with the pleading, where to return the form, and what happens next in the process.[117] The pleading form should have space and instructions for the respondent's answer.[118] Ideally, the pleading form should include information about the types of evidence both parties should bring to court and what the court proceeding will be like – all of the information they would need about their hearing on one form.[119]

The second type of information – about how a case is processed in court – should contain both procedural rules and local court administrative requirements.[120] Everything from a basic primer on courtroom behavior, rules of evidence, and burdens of proof should be included.[121] The information should also specify how to request continuances from the court and what the possible consequences are of not following the courts' orders.[122] This last aspect is the final type of information that should be included in pro se assistance information. How to comply with, or enforce an order, is often overlooked even though it is arguably the most important information a pro se litigant needs. Just as prevailing at trial matters little if the judgment is not enforced, being held in contempt by the court for not understanding the ramifications of failing to follow its orders can be as bad, if not worse, than losing at trial. Pro se assistance materials need to stress what to do after court, to include how to appeal an order or request for a rehearing.

Along with the above information, any material provided to the pro se litigant should include a requirement that it be reviewed by the pro se litigant prior to trial; if the material is never used it will be of no value.[123] Likewise, any pro se assistance material should include a description of the opportunity to have, the role played by, and where to obtain counsel.[124] The material should also contain a disclaimer that the information is not a substitute for competent legal counsel and has no guarantee of accuracy.[125] If parties decide to proceed pro se, there

[115]LANDSTREET & TAKAS, *supra* note 12, at 11.
[116]Zorza, *supra* note 6, at 54.
[117]*Id*.
[118]*Id*.
[119]*Id*. at 62.
[120]LANDSTREET & TAKAS, *supra* note 12, at 31.
[121]Rebecca A. Albrecht, et al., *Judicial Techniques for Cases Involving Self-Represented Litigants*, 42 JUDGE'S J. 16, 45 (2003).
[122]Hannaford-Agor, *supra* note 9, at 15.
[123]Albrecht, et al., *supra* note 19.
[124]LANDSTREET & TAKAS, *supra* note 12, at 32.
[125]John M. Greacen, *"No Legal Advice From Court Personnel" What Does That Mean?*, 34 JUDGE'S J. 10, 14 (1995).

should be a form for them to sign stating that they understand the limitations and risks of being without counsel.[126] This form should be maintained in their court file.[127] Finally, materials, instructions, or information provided to pro se litigant should remind them what information or assistance court staff can and cannot provide.[128] Pro se assistance materials should be provided both where the pro se litigants will need them (e.g., the courts) and where they will go to find them – legal aid offices, libraries, courthouses, etc.[129]

How to Provide the Information

Just as there can be a variety of types of information to provide pro se litigants, there likewise are many forms in which the information can be presented. These forms can be broken down into two basic types – programs with human interaction and impersonal or automated systems. Each has its own unique advantages and disadvantages.

Programs with human interaction can include offices, information tables and kiosks, court clinics, and "live" telephone systems manned by volunteer lay people, pro se clerks, staff or volunteer attorneys, and law students.[130] General information about the law, procedure, and practice is provided either individually or to a group of pro se litigants who share a common category of legal issues in a clinic setting.[131] Pro se litigants are generally assisted with the information needed to complete court forms, but generally the staff or volunteers do not prepare the forms for the pro se litigant.[132] The goal of providing this information either individually or to groups in a clinic setting is to provide sufficient information to allow the pro se litigant "to understand and access the type of pleadings required, basic rules such as service of process, basic information that the court will require to render a decision, and a sense of the range of remedies available."[133]

The advantages of programs based on human interaction are varied. Through having conversations with pro se litigants, it is possible to assist them much better than if they were limited to the information given by an automated system. By having discourse, assistance can be flexible, more user-friendly, and normally better received. Unfortunately, the disadvantages of such a system are also varied. These programs require people to staff them; even if they are volunteers it can still require a great deal of resources to manage and administer the program.

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[126]LANDSTREET & TAKAS, *supra* note 12, at 32.
[127]*Id.*
[128]*Id.*
[129]Hannaford-Agor, *supra* note 9, at 16.
[130]Engler, *supra* note 4, at 1999-2000.
[131]Barry, *supra* note 1, at 1883.
[132]Thompson, *supra* note 2, at 1314-15.
[133]Barry, *supra* note 2, at 1883.

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Because different individuals can be providing the information, it is less likely to be standardized as with an automated system. Finally, and most importantly, it is possible that the line between legal information and legal advice might be impermissibly crossed. Many programs, since they are staffed either by non-lawyers or court personnel, are limited by the traditional prohibition against giving legal advice. Even some programs staffed by volunteer lawyers or law students do not include providing legal advice as part of the program's stated goal.[134] Impermissibly providing legal advice can lead to allegations of unauthorized practice of law or, in the case of attorneys, malpractice claims.

Examples of impersonal or automated systems include books, pamphlets, informational sheets, videos, automated telephone systems, and Internet websites.[135] Videos on the court process, made in languages needed by the local population, can be very successful in walking litigants through legal procedures and explaining what they are likely to encounter in court.[136] Besides being able to be played in courthouse lobbies and waiting areas, videos can be lent to libraries, community organizations, legal service providers,[137] and even shown on local-access television channels.

Perhaps the greatest potential for aiding pro se assistance efforts is the growth of information access and sharing through the Internet.[138] Forms and instructions are made available on line, as are answers to frequently asked questions.[139] An eventual goal of such a technological approach is to create an Internet-based interactive system to generate pleadings and other forms using the pro se litigant's responses to a series of questions.[140] Computers are also being made available in the courthouses to help pro se litigants; kiosks such as QuickCourt and ICan can produce complete legal documents for use in court proceedings.[141] These automated-interactive systems can be programmed to provide information in a variety of languages, greatly reducing the numbers of questions posed to court staff and increasing the segments of the population that can be served.[142]

Automated systems have the advantage of around-the-clock service,[143] providing consistent information without the possibility of crossing the line into legal advice. Automated systems can be less expensive to operate, and require less day-to-day management and

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[134]Engler, *supra* note 4.
[135]*See generally id.* at 2003-2004; Hough, *supra* note 1.
[136]Barry, *supra* note 1, at 1915.
[137]*Id.*
[138]Robertson & Giddings, *supra* note 3, at 72.
[139]*See generally* Thompson, *supra* note 2, at 1314-15, 1318; Engler, *supra* note 4, at 2000 (citations omitted).
[140]Thompson, *supra* note 2, at 1319.
[141]Barry, *supra* note 1, at 1894.
[142]*Id.*
[143]*Id.* at 1893.

administration as compared to human interaction programs. The difficulty with such an approach is that it can lack user-friendliness and only can provide the information that it is programmed with. Automated systems lack the ability to work with pro se litigant to determine what their question really is, and the flexibility of how to best provide the information to them.

Pro Se Programs That Give Legal Advice

Full-service pro se assistance programs – ones that not only provide legal information but also legal advice – are the legal equivalent to the "big-box" home improvement stores as they "supply the tools used to do the task yourself."[144] As some feel that telling people the law is not enough,[145] there is also a need to give guidance and advice on how to use the information the pro se litigant is given. Pro se assistance programs that give legal advice, in addition to all forms of information described above, fall into two basic categories – those programs that are court or courthouse based and officially sponsored by the court system, and those that are, both physically and organizationally, outside the court system.

Few court-based programs that provide pro se legal advice also provide any sort of representation.[146] As most of these programs serve a high volume of pro se litigants, often the legal advice given is not extensive.[147] Rather, the focus is on what the burdens of proof are for different causes of action, and providing the pro se litigant resources to better understand what he or she needs to do in order to meet those burdens.[148] A by-product of discovering what they would have to prove at trial in order to prevail, many pro se litigants realize that they might be unsuccessful at trial and therefore be more willing to seek lesser remedies or negotiate a settlement with the other party.[149] This process of evaluating the merits of claims is one of the more often over-looked roles of counsel, and an area that is extremely vital to any pro se assistance program.[150]

[144]*Id.* at 1892.
[145]Zorza, *supra* note 6.
[146]Engler, *supra* note 4.
[147]*Id.*
[148]Thompson, *supra* 2, at 1316.
[149]*Id.* at 1317.
[150]*Id.*

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This form of legal advice does not necessarily have to be provided in person; research assistance and advice of this type can be provided on-line or telephonically.[151] An advantage of this approach is that pro se litigants can e-mail or call and leave their questions, which can then be responded to by staff or volunteer attorneys either on-site or remotely.[152] Even with programs that provide legal advice, many queries are merely generic legal information questions.[153]

Another facet of court-based pro se assistance is in the creation of more "user-friendly" forms and court procedures and processes. By making the process simpler, access to the courts for the pro se litigant is increased while the demand for assistance is decreased.[154] Even small things can have a large impact on the ease with which the pro se litigant can have in accessing the justice system. For instance, by always having the same pro se litigant appear before the same judge in subsequent court visits, both the court and the pro se litigant benefit – the pro se litigant does not have to attempt to familiarize different judges with his or her issues, saving time for the court, the pro se litigant, and other litigants as well.[155] Another example is merely having the pro se assistance office review pro se litigants' forms to ensure they are properly prepared and logically consistent prior to submission to the court.[156] In these ways, even though the pro se litigants are not "represented" in the traditional model, they are more likely to have their claims properly presented to the court, to a judge who understands them better as an individual, and they will understand better what it is they must prove to the court in order to succeed.

Outside Assistance

The other form of pro se legal assistance that provides legal advice is that performed outside the courthouse, provided by private attorneys working either for free or reduced-rates and legal aid organizations. While courthouse-based pro se assistance programs might refer pro se litigants to these programs, they are separate entities from the official organizations that are operating within the courthouse-based pro se assistance programs. For example, a court-based program may help match a pro se litigant with a legal aid organization, private attorney, or social service agency.[157] By performing initial case intake and screening, the court-based pro se assistance program directs the individuals to where they need to go – saving the individuals and the partner agencies time and effort.[158] The Idaho pro se assistance program, for example, is

[151]*Id.* at 1317-18.
[152]*Id.* at 1318.
[153]*Id.*
[154]Engler, *supra* note 4, at 2001.
[155]Robertson & Giddings, *supra* note 3, at 71.
[156]Thompson, *supra* 2, at 1316.
[157]*Id.* at 1314.
[158]*Id.*

unusual in that its original goal was to link every pro se litigant to an attorney,[159] whether ones willing to work for a reduced fee or those attorneys willing to provide free – known as pro bono – assistance.

While historically the private bar throughout the United States has failed in providing significant legal assistance to those who cannot afford legal representation via pro bono assistance,[160] pro se assistance programs have the ability to remedy this. They have the ability to link individuals with attorneys willing to provide pro bono assistance,[161] but also can serve as a platform to recruit attorneys to provide specific types of pro bono assistance. Through referral to attorneys willing to provide either low-cost or no-cost legal assistance, the pro se assistance program can help people receive legal assistance from members of the bar at virtually no cost to the taxpayer. Unfortunately in the Idaho example, the goal of linking litigants to attorneys changed as it was clear that the demand for legal assistance far exceeded supply of attorneys willing to help.[162]

Too much demand and lack of supply has affected legal aid organizations as well. Both governmentally-funded and privately-funded legal service programs lack resources to help many pro se litigants even though they are otherwise eligible for assistance.[163] Only a small fraction get assistance, and the assistance they receive is minimal – usually only brief advice and not the full-service representation that they need.[164] Prior to the 1960's, there was very little government assistance for representation in civil litigation.[165] Recently it has not gotten much better; over the last two decades federal funding of legal service programs – the source for two-thirds of all funding for legal aid organizations – has been cut by a third with greater restrictions placed on the cases and clients government-funded programs can help.[166] The lack of funding has resulted in four-fifths of the legal needs of the poor, and two- to three-fifths of the legal needs of the

[159]*Id.* at 1315.
[160]Deborah L. Rhode, *The Social Responsibility of Lawyers: Equal Justice Under Law: Connecting Principle to Practice*, 12 WASH. U. J.L. & POL'Y 47, 59 (2003); Barry, *supra* note 2, at 1884-85.
[161]*See generally* Engler, *supra* note 4, at 2049.
[162]Thompson, *supra* 2, at 1315.
[163]Eric J.R. Nichols, *Preserving* Pro Se *Representation in an Age of Rule 11 Sanctions*, 67 TEX. L. REV. 351, 384 (1988).
[164]Rhode, *supra* note 58, at 54.
[165]Tiffany Buxton, *Foreign Solutions to the U.S. Pro Se Phenomenon*, 34 CASE W. RES. J. INT'L L. 103, 105-106 (2002); Caroline Durham, *Law Schools Making a Difference: An Examination of Public Service Requirements*, 13 LAW & INEQ. 39, 39-40 (1994) (noting the importance of legal clinics and that the demand for their services outstrips the supply). *See also* Barry, *supra* note 5. Ms. Barry writes that the Economic Opportunity Act of 1964 instituted the first federally supported legal services program for the poor. Prior to 1964, there were about 150 legal aid societies in the United States employing 600 lawyers with a combined budget of $4 million; within a few years of the Act's passage, that number grew to over 2500 lawyers with a budget in excess of $60 million. *Id.*
[166]Rhode, *supra* note 58, at 54; Buxton, *supra* note 63.

middle class being unmet.[167] The net result is that there is only one lawyer available to serve approximately 9,000 low-income persons,[168] and in the mid-1990's approximately 9.1 million Americans' legal needs were unmet. [169] It has been estimated that it would take three to four billion dollars a year to meet merely the minimal civil legal needs of low-income Americans; ten-times the $300 million now spent.[170]

One way pro se assistance programs can help remedy the supply and demand problem is by advocating for what is referred to as "unbundled," "discrete task representation," or "limited-scope representation" by legal services providers, whether private attorneys or legal aid organizations. Essentially, this is the type of legal advice and assistance normally provided by court-based pro se assistance programs.[171] It suggests a form of legal representation between an attorney and a person seeking legal services in which it is agreed that the scope of the legal services will be limited to specific tasks that the person asks the attorney to perform.[172] Many legal services are susceptible to being broken down into separate tasks to make matters easier for consumers to handle on their own or with minimal assistance.[173] For instance, some pro se litigants are comfortable presenting their case in court, but are not capable of preparing the necessary documents or materials necessary to come before the court.[174] Others might need assistance only in determining what their legal options are, or after litigation, in enforcing an order.[175] By not utilizing the full legal representation model, but rather by tailoring the services provided to those services the litigant needs, unbundled legal representation can ensure that the available supply of attorneys – whether pro se, reduced-fee, legal aid organization, or court-based pro se assistance program – meet the demand. By utilizing this type of approach, everyone wins. Pro se litigants will benefit by being able to afford to procure some legal assistance from the bar that otherwise would be unreachable through strict adherence to the full-representation model. Legal aid organizations would benefit by allowing their limited resources to be able to serve more individuals than with the full representation model.[176] Attorneys could gain more clients, albeit for limited services, and the courts benefit by having better prepared pro se litigants.

[167]Rhode, *supra* note 58; Engler, *supra* note 4.
[168]Rhode, *supra* note 58.
[169]Barry, *supra* note 2, at 1885.
[170]Rhode, *supra* note 58, at 50.
[171]*See generally* Robertson & Giddings, *supra* note 3.
[172]Hough, *supra* note 1.
[173]Robertson & Giddings, *supra* note 3, at 72.
[174]Hough, *supra* note 1.
[175]*Id.*
[176]Robertson & Giddings, *supra* note 3, at 70.

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Goals of Pro Se Assistance Programs

Regardless of the type of pro se assistance program, there are certain goals which are common to all whether they provide legal assistance or not. These goals include:[177]

Educating the Pro Se Litigant

- Increasing understanding of, and compliance with, court orders.

Pro se litigants, lacking an attorney to explain the legal system to them, often misunderstand court orders. A pro se assistance program should have as a goal to better educate self-represented litigants about the legal system and its procedures so they will be more likely to understand the court orders and the consequences of noncompliance, leading them to take more responsibility in following the court's orders.

- Increasing "Just" Outcomes

Actually a misnomer, whether or not a pro se litigant uses the services of a pro se assistance program has absolutely no impact on how "just" the outcome of a trial would be; it does, however, impact the perception of "justice." Many self-represented litigants come to court ill-prepared and do not know how to properly present their cases. As a result, the court may lack information or have inaccurate information upon which to base its rulings, leading to outcomes the pro se litigant did not want. All of this leads to the pro se litigant feeling that the legal system is unfair. By educating pro se litigant, assistance programs can teach them to present their best case, and while they might not prevail, they will be more likely to be heard on the merits.

- Increasing User Satisfaction

Akin to achieving more "just" outcomes, when pro se litigants learn how to navigate the court system, and are better prepared to present their cases, the legal system can respond more appropriately to their needs. Through education, pro se litigants have more realistic views of the merits of their cases and have more reasonable expectations based on the law and the facts. Pro se litigants who understand what a court can and cannot do will be more likely to feel the court has been fair in its decision. When the legal process is demystified, pro se litigants can be more satisfied with their experiences overall.

Substantive Effects

- Increasing Access to Justice

Much of the population that needs access to the court system is unable to due to geographic, language, cognitive, and financial barriers. As a result, many people who want to bring their cases to court simply cannot, and others may not even be aware that they have a legal recourse.

[177]Hough, *supra* note 1 (providing, unless otherwise noted, all of the goals listed *infra*).

Pro se assistance programs seek to eliminate these barriers, increasing access to justice for large portions of the population that otherwise would not have access to it.

- Increasing the Efficiency and Effectiveness of the Court System

Pro se litigants often come to court either unprepared or improperly prepared, with wrong or improperly completed forms and materials. Being uninformed about court procedures, they often require extensive assistance from court clerks. Many times, due to no or improper preparation, their cases take longer to try, are dismissed without prejudice only to be refilled, or continued.[178] The overall effect is that these cases have the potential to take more docket space than they should, impacting not only the pro se litigant in having to come to court more often but also delaying the adjudication of other matters as well. Pro se assistance programs, through educating self-represented litigants, help them get their issues resolved the first time, benefiting not only themselves but other litigants and ultimately the tax-paying public as well. An additional goal of any pro se assistance program would be to help the pro se litigant resolve his or her issues *without* going to court through either settlement or alternative dispute resolution.[179] A study in Idaho found that fifty-three percent of litigants using attorneys eventually went to court on their case, while seventy-six percent of pro se litigants went to court.[180] Having additional pro se cases being resolved out of court would help reduce the ever-growing burden on the court system.

Whatever pro se assistance program is instituted, a continuing goal should be to reevaluate the needs of the pro se public and best means to meet those needs.[181] This can be accomplished through the use of customer satisfaction surveys and intake forms of new pro se litigants.[182] Likewise, continued training for program and court personnel, as well as fine-tuning of the pro se assistance program to meet local conditions, should always be a goal.[183]

Pro Se Assistance Programs: Concerns

Regardless of the merits and enviable goals of pro se assistance programs, there nevertheless have been a variety of concerns and criticisms about them. The first such criticism is a basic limitation of any information based pro se assistance program: telling people the law is not enough.[184] While telling a pro se litigant how to act in court, what to bring, and how to fill out a form is important, it is not a substitute for representation by qualified counsel. Limited encounters with lawyers and assistance from non-lawyers may not provide pro se litigants with

[178] *See also* Thompson, *supra* 2, at 1316.
[179] *See also id.*
[180] *Id.*
[181] *Id.* at 1315.
[182] *Id.* at 1320.
[183] *See generally* LANDSTREET & TAKAS, *supra* note 12, at 21.
[184] Zorza, *supra* note 6.

enough assistance and information to enable them to make informed choices.[185] These encounters may produce only partially-prepared, and often confused, pro se litigants who cannot be viewed as having received the benefit of legal advice.[186] This can be especially true if the pro se litigant lacks functional literacy to understand the assistance material.[187] Even where pro se assistance programs provide legal advice, the limited and rushed nature of the encounter between the lawyer and litigant similarly precludes a presumption that the litigant has received the benefit of full and complete legal advice.[188] Not surprisingly, some proponents of pro se assistance programs, while praising their utility, uniformly acknowledge that the programs alone are often inadequate and require follow-up or supplemental measures to truly prepare a pro se litigant for court.[189]

A second problem often encountered with pro se assistance programs is that the pro se litigants do not take advantage of the services made available to them.[190] One pro se assistance program reported that very few pro se litigants took advantage of attorney referrals, volunteer attorneys, mediation materials, or opportunities to meet with child support enforcement agency personnel.[191] Even if they do take advantage of what is offered, however, there is data indicating that the results achieved by those who receive assistance are no different from the results achieved by those who do not receive assistance.[192] While pro se litigants might feel better prepared and better about their day in court if they actually choose to participate in a pro se assistance program, the assistance they receive might not make that much of an impact on the outcome of their case.

A third concern with pro se assistance programs involves the requirements needed to create them. Starting any sort of new program takes money: with budgets in crisis, states have little incentive to use what funds they have to create new pro se assistance programs.[193]

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[185]Engler, *supra* note 4, at 2005.
[186]*Id.* at 2002-2003, 2005.
[187]Robertson & Giddings, *supra* note 3, at 71.
[188]*Id.*
[189]*Id.*
[190]John M. Greacen, *Self Represented Litigants and Court and Legal Services Responses to Their Needs: What We Know* 23 (2002) (citations omitted) (on file with author).
[191]*Id.*
[192]*Id.* at 24.
[193]*See* Jeffrey Cohan, *Alleghany County's legal defense fund runs dry*, POST-GAZETTE.COM, Aug. 20, 2002, *at* http://www.post-gazette.com/localnews/20020820defense0820p2.asp; Eric Bartels, *Protest arrests may clog courts*, PORTLAND TRIBUNE, Mar. 28, 2003 *at* http://www.portlandtribune.com/archview.cgi?id=17336 (stating that the state budget crisis has resulted in elimination of court days and delayed trials for months). *See generally* David M. Herszenhorn, *How Did Such a Rich State Get So Poor?*, N.Y. TIMES, Dec. 22, 2002 *at* http://www.ccsu.edu/aaup/csu/herszenhornarticle.htm; Jeffrey L. Rabin, *State Spent Its Way Into Budget Crisis*, L.A. TIMES.COM, Oct. 29, 2002 *at* www.caltax.org/LATimes-StateSpentWayIntoBudgetCrisis10-29-02.pdf; Robert Sandler, *State lawmakers are calling this the worst budget in years*, MISSOURI DIGITAL NEWS, Mar. 1, 2002, *at* http://www.mdn.org/2002/Stories/Budget3.htm.

Programs require dedicated staff that does not have additional duties.[194] Furthermore, not just any person would be acceptable to staff a pro se assistance program; "[t]he individual chosen for the job must be familiar with the culture of the courthouse in which s/he will work and the surrounding area; community contacts and stature are as important to program success as professional credentials."[195] It might be argued that the funding required to create and staff a pro se assistance program could be better spent supporting existing legal aid programs.

A fourth concern is that having pro se assistance programs can discourage individuals who would otherwise seek legal help, and who need it, from seeking it.[196] As consumers become more resourceful and more skilled, they are in some cases becoming less trusting of legal service providers.[197] This, however, is the risk of any consumer-driven process: when consumers have choices, they may make the wrong choice. This is true whether the individual is buying automobile repair parts, choosing dietary supplements, or filing a petition to institute a legal proceeding. The fact that consumer might make choices we do not agree with does not justify eliminating their ability to make choices.

A fifth issue raised regarding pro se assistance programs involves "unbundling" legal services. While attorneys have provided unbundled services for years – handling discreet tasks for the client instead of providing full-representation – the profession is only recently seriously considering the consequences of these types of legal services.[198] Some commentators are concerned about malpractice actions that could be brought regarding only providing partial services to a client; others are concerned that judges will not respect a "partial" representation and hold the attorney liable for what the litigant does or does not do.[199] If unbundling is to become a reality, it will likely require significant statutory changes regarding attorney ethics, malpractice claims, and the definition of legal representation.

A final issue regarding pro se assistance programs relates specifically to those programs that do not provide legal advice: sometimes, either inadvertently or intentionally, legal advice might in fact be given. Non-attorney staff members could face unauthorized practice of law allegations for the assistance they provide. Some programs attempt to preclude this by having waivers signed by patrons in advance of receiving information; others have sought statutory protection for staff members serving in pro se assistance programs. As the unauthorized practice

[194]Thompson, *supra* note 2, at 1320.
[195]*Id.*
[196]Robertson & Giddings, *supra* note 3, at 72.
[197]*Id.*
[198]Barry, *supra* note 2, at note 53 (citations omitted).
[199]*Id.*

of law can result in fines or incarceration,[200] this can be an issue affecting both the type and quality of assistance given by pro se assistance program staff members.

Conclusion

Better prepared pro se litigants not only help themselves, they also help our courts and other litigants.[201] Generally after receiving information or assistance, pro se litigants are better prepared in terms of the paperwork they submit to the court, understanding the court process, ability to present their case, and self-confidence: as a result, they are and less likely to have their cases rescheduled than those that do not receive assistance.[202] Pro se litigants who understand what is going on, who file the correct paperwork with the court, and who are not constantly asking questions of court staff, pose a lighter burden on the court and therefore free up resources for other litigants as well.[203] When properly prepared, the proceedings of pro se litigants have the potential to be completed, with fewer continuances, quicker than proceedings when both parties are represented.[204] Even the taxpayer can benefit through pro se assistance programs, as there is evidence that they are much more cost effective that other forms of legal assistance.[205] In these days of chronic budget shortfalls, this is a very practical consideration.

Providing assistance to individuals who represent themselves is a response to the chronic lack of resources to provide representation for all persons who desire it.[206] Pro se assistance has existed even prior to the creation of any formal assistance programs, even if merely in the form of clerks' offices fielding procedural questions. Ultimately, the choice is not between either having a pro se program or not, but rather between having r a planned pro se assistance program or an unplanned pro se assistance program.[207] Even with a pro se program, not all difficulties disappear; no matter how carefully forms are designed, how much help is given, some litigants will still have problems.[208] While there is no one ideal solution as to how states should create, staff, and implement a pro se assistance program,[209] the concept of pro se assistance remains an attractive, "next best" alternative to full-service legal representation packages.[210]

[200] *See, e.g.*, Va. Code Ann. § 54.1-3904 (2004).
[201] Barry, *supra* note 2, ate 1881.
[202] Thompson, *supra* note 2, at 1316; Greacen, *supra* note 88, at 2, 22, 24.
[203] Engler, *supra* note 4, at 2041.
[204] Greacen, *supra* note 88, at 10.
[205] *Id.* at 3.
[206] *Id.* at 12.
[207] LANDSTREET & TAKAS, *supra* note 12, at 6.
[208] *Id.* at 5.
[209] *See generally* Thompson, *supra* note 2, at 1320.
[210] Robertson & Giddings, *supra* note 3, at 72.

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The NCSC web site on pro se support is at URL: http://www.selfhelpsupport.org.

APPENDIX C: PROJECT ADVISORY COMMITTEE MEMBERS AND SUBCOMMITTEES
Contact Information: Project Advisory Committee on Improving Child Support Litigation

CHAIRMAN:

Hon. William W. Sharp, Judge
Warren J&DR Court
P. O. Box 1618, 1 East Main Street
Courthouse, Room 23
Front Royal, VA 22630-1618

Hon. A. Ellen White, Judge
Campbell J&DR Court
P. O. Box 220, 732 Village Hwy., Second Fl.
Rustburg, VA 24588-0220

Hon. Gayl Branum Carr, Judge
Fairfax County J&DR Court
4000 Chain Bridge Road
Fairfax, VA 22030

Hon. Joanne Alper, Judge
Arlington Circuit Court
1425 N. Courthouse Rd.
Arlington, VA 22201

Julia F. Ritchie, Clerk
Harrisonburg J&DR District Court
53 Court Square, Room 161
Harrisonburg, VA 22801
jritchie@courts.state.va.us

Debra A. Hill, Clerk
Norfolk J&DR District Court
800 East City Hall Ave.
Norfolk, VA 23510-2727
dhill@courts.state.va.us

Craig Burshem, Senior Assistant
Attorney General
Office of the Attorney General
900 East Main Street
Richmond, VA 23219
Craig.burshem@dss.virginia.gov
804-786-4362 (direct) or 804-786-2071

Nick Young, Director
Division of Child Support Enforcement
Virginia Department of Social Services
7 North 8th Street
Richmond, VA 23219
Nick.Young@dss.virginia.gov
804-726-7416/7417

Janet M. Rainey, Manager
VDH Division of Vital Records
1601 Willow Lawn Drive, Suite 275
Richmond, VA 23230
Janet.Rainey@vdh.virginia.gov
804-662-6245

Shauna F. Epps, Disproportionate Minority
Contact (DMC) Coordinator
Virginia Department of Juvenile Justice
700 East Franklin Street, 4th Floor
Richmond, VA 23219
eppssf@djj.state.va.us
804-225-8192
804-371-0725 (FAX)

Ray Hartz, Esq., Family Law Staff Attorney
Virginia Law Poverty Center
700 East Franklin Street, Suite 14T1
Richmond, VA 23219
ray@vplc.org
804-782-9430

Beth Doucette, Esq., DCSE Contract Attorney
2486 Rivermont, Ste. 202
P.O. Box 3059
Lynchburg, VA 24503
EPDatty@aol.com
434- 845-2444

SUBCOMMITTEES

Subcommittee A: Assisting Pro Se Litigants
Hon. Joanne Alper, Judge
Hon. Gayl B. Carr, Judge
Beth Doucette, Esq., DCSE Contract Attorney
Shauna F. Epps, D.M.C. Coordinator, Juvenile Justice
Ray Hartz, Esq., Family Law Attorney
Paula Hannaford-Agor, Esq., Staff

Subcommittee B: Developing "Best Practices"
Hon. A. Ellen White, Judge
Craig Burshem, Esq., Senior Assistant
Beth Doucette, Esq., DCSE Contract Attorney
Shauna F. Epps, D.M.C. Coordinator, Juvenile Justice
Ray Hartz, Esq., Family Law Staff Attorney
Julia F. Ritchie, Clerk
Lelia Hopper, Staff
Kathy L. Mays, Staff

Subcommittee C: Improving Interagency Operations and Communication
Hon. Gayl B. Carr, Judge
Janet M. Rainey, Manager, Vital Records
Nick Young, Director, DCSE
Sandra W. Brown, Staff

APPENDIX C: PROJECT ADVISORY COMMITTEE MEMBERS AND SUBCOMMITTEES

STAFF:

Drew Swank, Esq.
Project Director
Supreme Court of Virginia
100 N. 9th Street, 3rd Floor
Richmond, VA 23219
dswank@courts.state.va.us
804-786-9543
804-786-4542 (FAX)

Paula Hannaford-Agor, Esq.
Staff, Subcommittee A
National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185-4147
1-800-616-6109

Sandra W. Brown
Staff, Subcommittee C
Administrative Liaison to the Courts
Division of Child Support Enforcement
Virginia Department of Social Services
7 North 8th Street
Richmond, VA 23219
804-726-7474

Charles R. Owen
Project Manager (10-04 through 4-06)
Division of Child Support Enforcement
Virginia Department of Social Services
7 North 8th Street
Richmond, VA 23219
804-726-7434

John M. Greacen
Project Evaluator
Greacen Associates, LLC
HCR 78 Box 23
Regina, New Mexico 87046

Lelia Hopper,
Staff, Subcommittee B
CIP Director
Supreme Court of Virginia
100 N. 9th Street, 3rd Floor
Richmond, VA 23219
lhopper@courts.state.va.us
804-786-9546 (direct)
804-786-4542 (FAX)

Kathy L. Mays
Staff, Subcommittee B
Director, Judicial Planning
Supreme Court of Virginia
100 N. 9th Street, 3rd Floor
Richmond, VA 23219
804-786-6455
804-786-4542 (FAX)

Todd W. Areson, Ph.D.
Project Manager (until 10-04)
Division of Child Support Enforcement
Virginia Department of Social Services
7 North 8th Street
Richmond, VA 23219

APPENDIX D

MENU OF "BEST PRACTICES" OCTOBER 2004

The 25 "best practices" presented at the Pilot Courts Training Seminar, held in Richmond on October 21, 2004, were categorized as follows:

Docketing Concepts

1. Dedicated DCSE Docket – Placing all DCSE cases on specialized dockets to make more efficient use of DCSE staff attending child support hearings.

2. Hour-Certain/Optimum Sized Dockets – Scheduling cases for staggered times rather than setting them all for the start of the morning or afternoon docket, to reduce litigant and lawyer waiting time. Consolidating dockets so that a judge would have from 50-to- 60 cases per day.

3. Docket the Easiest and Quickest Cases First

4. Court Differentiation Between Child Support Case Types – Note DCSE and non-DCSE and IV-D and non-IV-D cases in court records, and use these differentiations in calendaring cases.

5. Meaningful Events Only in the Courtroom – Lawyers and litigants should have the expectation that cases called in court will proceed to resolution on that date and be prepared, consequently, to move the case forward.

Pre-Court Concepts

6. Running Child Support Guidelines – Guideline calculations should be conducted prior to a court appearance. If the parties dispute the figures on which the guidelines are computed, multiple calculations should be computed in advance of court.

7. Complete Genetic Testing and Paternity Order in Advance – Do not use court time to fill in forms requesting genetic testing or paternity orders. Forms should be completed in advance, ready for court approval at the hearing.

8. Capacity of DCSE to Excuse Parties – When DCSE can resolve a matter prior to a hearing, it should prepare a consent order for the judge's approval and, then, excuse the party from the need to appear before the judge.

9. Early Guardian Ad Litem (GAL) Appointments in Disestablishments – Appoint a GAL at the time genetic testing is ordered to reduce the time required to resolve the case.

Courtroom Management Concepts

10. Leave with an Order – Whether or not the amount of child support has been changed. If the matter is continued, the order should identify the unresolved issues.

11. Keep Cases with the Same Team – Of DCSE and court staff.

12. Minimize Transition and Down Time – By checking parties in when they arrive in court, having all parties in the courtroom, or calling them into court through a public address system.

13. Verify Addresses at Each Hearing – To maintain the currency and accuracy of court records and ensure that future notices will be received by the parties.

14. Use Recognizance Forms – Court orders that require a parent's appearance at the next scheduled court hearing.

15. Automation Support – Have a computer, printer, and Internet connection in each child support hearing courtroom for access by DCSE staff to the DCSE APECS database.

16. Capacity of DCSE to Interview Parents before Court

Innovations

17. Genetic Testing at Court – Arrange for taking DNA samples at the courthouse to eliminate additional appointments for litigants.

18. Terminate Court-Issued Income-Withholding Orders – By creating a new form for use by litigants seeking termination of an income-withholding order.

19. Revamp and Use Form DC-603 – To inform litigants, in advance, what they need to bring to court for a child support hearing.

20. Tackle the Employment Dilemma – By replicating successful programs initiated in Spotsylvania/Fredericksburg and Petersburg (e.g., the Barriers Project) to provide resources and motivation for non-custodial parents to obtain employment.

21. Make Information Available to Self-Represented Litigants in Advance – Through dissemination of the handbook developed by the project.

22. Advisement Letter/Hearing – In which litigants are informed by mail (rather than during a court hearing) of their right to counsel and how to obtain verification of their right to appointed counsel at the clerk's office.

23. Administrative Review Hearings – In which the judge or DCSE staff checks the status of a non-custodial parent by telephone or during an *ex parte* process that does not require court hearing time.

24. The Alternative Dispute Resolution (ADR) Option – Use court mediation coordinators to arrange for mediation of all appropriate cases, including DCSE, non-DCSE, and non-IV-D cases (i.e., those not handled through DCSE).

25. Create Scripts and Formats – Standardize courtroom proceedings prepared in the project.

Also, the project prepared and provided to each pilot court team a 36-page "Judges Bench Book on Child Support Enforcement Proceedings" (presented as Appendix F). The Bench Book includes frequently asked questions and answers and proposed scripts for *each* of the seven child support case types. Further, the October 2004 training seminar included a presentation on principles for improving the court experience for self-represented litigants by Paula Hannaford-Agor of the National Center for State Courts.

Judge: _____ **Court:** _____

Case number **Service** **Case Type (check one)** **Representation** **Case Time Duration** **Continuance**

Case Number	Service? (Y/N)	Service Date	Show Cause	Mod	Initial Petition	Paternity (only)	UIFSA	Other	CP Represented? Y/N	NCP Represented? Y/N	Time Hearing Set On Docket	Time Hearing Began	Time Hearing Ended	Continued? Y/N	No Service? (Y/N)	Fail to Appear? (Y/N)	Con't For Review? (Y/N)

CHILD SUPPORT PROJECT
COURT DATA COLLECTION INSTRUCTIONS

TO ALL JUDGES AND CLERKS OF COURT PARTICIPATING IN THE CHILD SUPPORT PROJECT

Thank you again for participating in the Child Support Project. This packet contains the court data collection form and instructions you will need to complete it. The data will be used to establish a baseline for your court in terms of how it is processing child support cases. The same information will be collected at the end of the Project next year. By comparing the data from the beginning of the Project with that from the end, it is hoped to be able to discern the effects of the best practices instituted by your court as part of the Project.

There are three main components to the data collection effort:

1) Submission of photocopies (front and back) of 50 completed DC-644, Order Determining Paternity, that your court has entered prior to the start of the project. The paternity orders will be screened for clerical and informational errors that would cause for them to be rejected by the Division of Vital Records. Pilot courts will be alerted of any problem areas with their paternity order submissions.

2) Data for 100 concluded child support cases. The cases can be either DCSE or non-DCSE cases; there is no requirement that the cases be consecutive from one child support docket or from consecutive child support docket days. Instructions for collecting the data and completing the Court Data Form are provided below. The data is information that is not available on CMS, and will be used to complement CMS data so as to be able to objectively analyze the processing of child support cases in your court.

3) Court Staff and Litigant Surveys. There will be two types of surveys, one for court staff, judges, clerks, and DCSE personnel involved in the pilot court, and one for litigants. For a 30-day period commencing after the Pilot Court Training Session on October 21st, surveys will be distributed directly to the courts for completion and dissemination to litigants. Separate instructions will be issued for the completion of the surveys.

<u>Instructions for completing the court data form</u>:

1. Top of form: Enter the presiding judge's name and the name of the court.
2. The form allows for the entry of 20 child support cases on one form. If a case has more than one issue on the docket (for example, a modification and a show cause), only one entry line will be used. Print the form 5 times so as to have entry space for the 100 child support cases.
3. Case number: Enter the court's case number in the first block.
4. Was there service?: If there was service on the respondent, enter a "Y"; if there

was no service on the respondent, enter an "N." NOTE – this section of the form merely requires information on whether there was service, not if the service was successful in compelling the individual to appear.

5. If there was service, indicate the date service was made on the respondent in the next box.
6. Under the section entitled "case type," mark the type of issue that is before the court. If a case has more than one issue, mark each box that applies. NOTE – "mod" refers to a modification or motion to review action. If only paternity is at issue, mark the box that states "paternity only". If the case involves an out-of-state action, mark both the type of action ("show cause," etc.) and the box marked "UIFSA." If no box applies, mark "other."
7. Under the section entitled "representation," put a "Y" or "N" for both the custodial parent (CP) and non-custodial parent (NCP) to reflect if they were represented or not. NOTE – DCSE does not represent custodial parents. Mark "Y" for the custodial parent only if he/she had retained counsel. For the non-custodial parent, put a "Y" if he/she had retained counsel or had counsel appointed.
8. Under the section entitled "case time duration," put the time the matter was docketed for in the first box, the actual start time in the second box, and the time the matter ended in the third box.
9. Under the section entitled "continuance information," if the matter was continued for any reason mark the first box with a "Y", if not, enter an "N." If a matter was continued, check the box that best represents the reason why; if none of the three boxes is applicable, do not check a box other than entering the "Y" in the first box.

Once you have completed the forms for 100 child support cases or collected the 50 paternity orders, send them to

Drew Swank
Staff Attorney/Project Director
Office of the Executive Secretary
Supreme Court of Virginia
100 North Ninth Street
Richmond, VA 23219

If you have questions regarding the use of this form or any of the data collection, contact Drew Swank, Child Support Project Director, at (804) 786-9543.

THANK YOU!!

APPENDIX F

JUDGES BENCH BOOK FOR CHILD SUPPORT ENFORCEMENT PROCEEDINGS (PREPARED FOR EACH PILOT COURT), OCTOBER 2004

Introduction

This bench book is primarily designed to assist judges of all courts presiding over child support cases. It is divided into seven chapters, one for each child support case type. At the beginning of each chapter, there are **"Frequently Asked Questions" (Section A)** on those issues that arise most often for that type of child support case. Additionally, there is a **Suggested Script (Section B)** to be used for that particular child support issue. While the script is merely intended to be a guide, it does ensure that all legal issues within a particular child support case type are addressed. Following the script may guide the judge past certain pitfalls that might otherwise result in error. Scripts can be modified as needed to match local procedures or practices.

Within each chapter, information for the judge and statutory/case citations are provided in *italics.* Suggested script material is in plain text, with blanks to insert the party's or child's name. General background information is provided in text boxes.

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Chapter 1. Determination of Paternity

A. Frequently Asked Questions:

1. How is genetic testing conducted?

The test is a painless and completely safe procedure for both the child and parents. A buccal swab – basically a Q-tip – is rubbed in four areas of the mouth to collect a sample of the individual's DNA – his or her unique genetic code. Normally six genetic markers of the child and both prospective parents are compared from the samples of DNA. Blood samples are no longer drawn to extract DNA.

2. How are the results determined and reported?

Through a mathematical calculation, the probability of paternity is determined – the likelihood that the individual is the child's father. The results of the genetic test will be in a written report from the laboratory. They will either indicate that there is a zero chance of the individual having fathered the child, or some percentage. The results never indicate a 100% chance of the individual having fathered the child.

3. What test result is needed to determine paternity?

Any test result of 98% or greater probability of paternity, along with evidence of the father's access to the mother during the time of conception is enough to prove paternity under the Code of Virginia § 20-49.1(B)(2). *See Commonwealth v. Flaneary*, 22 Va. App. 293 (1996).

4. What if the test results indicate less than a 98% probability of paternity?

If the test results indicate less than a 98% probability of paternity, the custodial parent or Division of Child Support Enforcement has the burden, by clear and convincing evidence, to prove that the putative father is the biological father. This may be proven by evidence such as:

- sexual intercourse or cohabitation between the parents at the probable time of conception of the child; or
- medical, anthropological, or genetic test results; or
- the father agreeing to have a child use his last name; or
- the father claims the child on his taxes or with a government agency; or
- an acknowledgement of paternity by the father that the child is his.

See Code of Virginia § 20-49.4

5. If the parents are married, or were married, should a paternity test be ordered?

While in Virginia there is a legal presumption that if the putative parents are married, then paternity is established (*Jones v. Robinson*, 229 Va. 276 (1995), *DCSE v. Richardson*, 2002 Va. App. LEXIS 532 (Unpl. Va. Crt. App. 2002), genetic testing still may be ordered on the request of a party.

6. Who pays for the testing?

Per Code of Virginia § 20-49.3(B), the party requesting genetic testing normally must pay the cost of the testing; if the party qualifies as indigent, the Commonwealth will pay the costs of the test. Code of Virginia § 20-49.3(b).

7. Should genetic testing be ordered if there was already an acknowledge of paternity?

If there was a voluntary statement made under oath of both the mother and father for the child and neither party wishes to contest paternity, testing should not necessarily be ordered. If either parent contests paternity, testing should be ordered. See *Dunbar v. Hogan*, 16 Va. App. 653 (1993); *DCSE v. Flaneary*, 22 Va. App. 293 (1996).

8. Can a parent ask for genetic testing for just one of his or her children?

If there is more than one child, a putative father may wish to acknowledge, or request genetic testing for all, some, or just one of the children. There is no requirement to either acknowledge all or request genetic testing for all.

9. What happens if both parents are not available for testing?

The parents and children do not have to be tested at the same time nor in the same location. The Division of Child Support Enforcement is able to arrange for testing at different times, places, and can even arrange for testing in different states. This can be particularly important if the safety of a parent or child is in question. It is possible to merely test the putative father and child; this is known as a "motherless draw." It is also possible to test members of the putative father's family (mother or father) to determine paternity; these types of tests need to be arranged in advance with the laboratory.

10. What is the standard of proof for determining paternity?

Paternity must be proven by clear and convincing evidence. See Code of Virginia § 20-49.4.

11. What legal foundation must be laid for the introduction of the test results?

If genetic test results are filed with the court at least fifteen days prior to the hearing, there is no requirement for a witness to establish the foundation for the test results. Code

of Virginia § 20-49.3(c). If a party wishes to have a witness available to testify as to the analysis of the genetic test results, he or she must motion the court to subpoena the witness at least seven days prior to the hearing. Code of Virginia § 20-49.3(c). The party requesting the witness to appear and testify may be required by the court to pay for the witnesses' costs and fees or provide security in advance to cover the costs and fees of the witness. Code of Virginia § 20-49.3(c).

12. How do the parties get a birth certificate?

A birth certificate is the official documentation of a live birth; it does not legally establish paternity. If either parent wants to receive or make changes to a birth certificate, the parent must contact the Division of Vital Records at (804) 662-6200 or via mail at the following address:

Virginia Department of Health
Division Vital Records and Health Statistics
P.O. Box 1000
Richmond, VA 23218-1000

B. Suggested Script:

1. Determination of Paternity (Code of Virginia §§ 20-49.1 – 20-49.8)
The following information is provided for a single child. If there is more than one child, a putative father may wish to acknowledge, or request genetic testing, for all, some, or just one of the children. There is no requirement to either acknowledge all or request genetic testing for all. Per Code of Virginia § 20-49.3(B), the party requesting genetic testing normally must pay the cost of the testing; if the party qualifies as indigent, the Commonwealth will pay the costs of the test. Code of Virginia § 20-49.3(b).

1. a. Judge to the parties: This issue before the court is determining who the biological father of the child _____ is. The petition which was filed in this case names _____ as the biological father.

1. b. Judge to the parties: Has paternity previously been decided in any court for the child _____? *If paternity has previously been determined, and that determination is not void, the issue has previously been decided and the petition to determine paternity should be dismissed. If no, proceed to 1. c.*

1. c. Judge to the parties: Was the child _____ legally adopted by the Mr. _____? *If the child was legally adopted by the father, as demonstrated by a court order or other proof of a legal adoption, paternity is established per Code of Virginia § 20-49.1(c) and no further enquiry is required. Complete and enter the paternity order, DC-644. Provide copies to the parties, DCSE, and as directed per Code of Virginia § 20-49.8. If no, continue to 1. d.*

1. d. Judge to the parties: Was a voluntary acknowledgement of paternity of the child _____ signed under oath previously by both parties? Does either party wish to contest paternity at this time? *If there was a voluntary statement made under oath of both the mother and father for the child and neither party wishes to contest paternity, complete and enter the paternity order, DC-644. Provide copies to the parties, DCSE, and as directed per Code of Virginia § 20-49.8.* See Dunbar v. Hogan, *16 Va. App. 653 (1993). If there was no voluntary acknowledgement or a party wishes to contest paternity, continue as indicated below in 1.e.*

1. e. Judge to the mother, custodial parent, or if a public assistance case, DCSE: Is it your belief, as asserted in the petition, that Mr. _____ is the biological father of the child _____? *If "yes", continue to 1. f. below; if "no" the court should then enquire as to why the petition was filed naming the individual as the alleged father, and if the mother or custodial parent was inappropriately threatened or coerced to recant what was alleged in the petition. The case, if necessary, should be dismissed if the custodial parent, or DCSE in a public assistance case, voluntarily does not wish to proceed.*

1. f. Judge to the putative father: Mr. _____, you have been named as the father of the child _____. You have two options under the law of Virginia: either you may acknowledge paternity of the child _____ or you may request genetic testing. Even if you wish to acknowledge paternity, the custodial parent, or DCSE may still request genetic testing.

Genetic testing is a scientific way to determine paternity. Testing may be requested for all, some, or one of the children of the alleged parents; there is no requirement to test all children allegedly born between the individuals. If you request the test, and you are shown to be the father you may be required to pay $_____ for the testing. If you are shown not to be the father, you will not have to pay for the test. Any genetic test result of 98% or more probability of paternity, along with evidence that you had access to the mother at the probable time of conception, is sufficient proof of paternity under the law of Virginia.

You also have the option of acknowledging paternity under oath. If you acknowledge paternity, I will enter an order finding you to be the father, and you will have all of the rights and responsibilities of the child _____'s father. In a separate hearing, you may be required to provide child support for the child _____. If you are found to be the father, you may also petition the court for custody and visitation rights at a separate hearing.

Do you want genetic testing or do you want to acknowledge being the father of _____? *If the putative father chose to acknowledge paternity, go to 1. g. below; if he chose genetic testing, skip to section 1. i.*

1. g. <u>If the putative father chose to acknowledge paternity</u> - Judge to the mother, custodial parent, or DCSE: Mr. _____ has requested to acknowledge being the father of the child _____. You may request genetic testing in lieu of his acknowledgement, but you may have to pay for the cost of the test. Do you request genetic testing? *If yes, skip to the genetic testing section 1. i.. If no, proceed to 1.h.*

1. h. Judge to the putative father: *Place the putative father under oath.* You hereby swear or affirm that you are the biological father of _____. You further understand that genetic testing is available to scientifically determine whether you are the biological father of _____. You also understand that by your acknowledging paternity, the court will make an order determining you to be the biological father of _____, giving you all of the rights and responsibilities of being _____'s father, to include the possibility of paying child support. *If the putative father answers yes, complete and enter the paternity order, DC-644. Provide copies to the parties, DCSE, and as directed per Code of Virginia § 20-49.8. If the putative father decides against acknowledging paternity, order genetic testing as detailed below in 1. i., requiring the putative father to pay the costs of the tests if applicable.*

1. i. <u>If the putative father, mother, custodial parent, or DCSE choose genetic testing, or the putative father refuses to acknowledge paternity</u> - Judge to the parties: The court will enter an order for genetic testing. Both of you will receive a copy of the order. The order will set a date, time, and place for you to report for testing. There is also a telephone number should you have questions about the testing procedure. When you go for testing you must have a photographic identification – such as a valid driver's license, military identification card, etc. – to be tested. The child also needs to be tested at the same time as the custodial parent. If you fail to appear for testing, or fail to comply with the testing requirements, either of you may be fined or jailed by this court. Also noted on the order is the date that you are to return to this court. You must appear on that date and time here at court, or you may be fined or jailed by this court. *Complete form DC-624, specifying the test date, time, place, and date and time of the next court hearing. Give the parties, and DCSE if applicable, a copy of the test order. Schedule the continued paternity hearing far enough in advance to ensure that test results can be provided. If the safety of a party or child is in question, testing can be arranged at separate times. It is possible to merely test the putative father and child; this is known as a "motherless draw." DCSE is also able to arrange for testing with parties in different offices and even different states.*

An explanation of the genetic-testing procedure:

The test is a painless and completely safe procedure for both the child and parents. A buccal swab – basically a Q-tip – is rubbed in four areas of the mouth to collect a sample of the individual's DNA – their unique genetic code. Normally, six genetic markers of the child and both prospective parents are compared from the samples of DNA. Through mathematical calculation, the probability of paternity – the likelihood that the individual is the child's father – is determined. The results of the genetic test will be in a written report from the laboratory. They will either indicate that there is a zero chance of the individual having fathered the child, or some percentage. The results never indicate a 100% chance of the individual having fathered the child, though access to the mother during the time of conception, however, is enough to prove paternity under the Code of Virginia § 20-49.1(B)(2). See *Commonwealth v. Flaneary*, 22 Va. App. 293 (1996).

1. i. (i). At the continued paternity hearing:
If genetic test results are filed with the court at least fifteen days prior to the hearing, there is no requirement for a witness to establish the foundation for the test results. Code of Virginia § 20-49.3(c). If a party wishes to have a witness available to testify as to the analysis of the genetic test results, he or she must motion the court to subpoena the witness at least seven days prior to the hearing. Code of Virginia § 20-49.3(c). The party requesting the witness to appear and testify may be required by the court to pay for the witness's costs and fees or provide security in advance to cover the costs and fees of the witness. Code of Virginia § 20-49.3(c).

1. i. (i)(A). <u>If the genetic test results indicate a 98% or more probability of paternity</u> - Judge to the parties: The genetic test results indicate a _____% of probability of paternity.

1. i. (i)(B). Judge to the parties: *Swear in parties.* The court will now take evidence that Mr. _____ had access to Ms. _____ (mother) during the time of conception.

1. i. (i)(C). Judge to mother: Ms. _____, did you have sexual intercourse with Mr. _____ around the time of conception of the child _____?

1. i. (i)(D). Judge to the putative father: Mr. _____, do you wish to refute the evidence of the mother or provide the court with any evidence that you are not the father of the child _____?

1. i. (ii). *If the access of the putative father to the mother is proven:* **Judge to the parties:** There is sufficient evidence to indicate that Mr. _____ is the father of the child _____. *Complete and enter the paternity order, DC-644.*

Provide copies to the parties, DCSE, and as directed per Code of Virginia § 20-49.8. See Commonwealth v. Flaneary, *22 Va. App. 293 (1996).*

1. i. (iii). *If the access of the putative father to the mother is not proven, continue as indicated below in section 1. j.*

1. j. <u>If the genetic test results indicate less than a 98% probability of paternity or there is insufficient evidence that the putative father had access to the mother at the probable time of conception:</u> Judge to the parties: The genetic test results indicate a _____% of probability of paternity. To establish paternity, there must be clear and convincing evidence that Mr. _____ fathered the child _____. The custodial parent (or DCSE in a public assistance case) has the burden to prove he is the father. Evidence which may be used includes, but is not limited to:

- sexual intercourse or cohabitation between the parents at the probable time of conception of the child; or
- medical, anthropological, or genetic test results; or
- the father agreeing to have a child use his last name; or
- the father claims the child on his taxes or with a government agency; or
- an acknowledgement of paternity by the father that the child is his.

Allow the custodial parent or DCSE the opportunity to prove, by clear and convincing evidence, that the named individual is the father of the child. See Code of Virginia § 20-49.4. If the custodial parent or DCSE succeeds in meeting this burden, complete and enter the paternity order, DC-644. Provide copies to the parties, DCSE, and as directed per Code of Virginia § 20-49.8. If they fail to meet their burden, complete and enter the paternity order, DC-644, indicating that the individual named is <u>not</u> the father of the child. Ensure the parties have copies of all orders prior to leaving the court.

Chapter 2. Determination of Maternity (Code of Virginia §§ 20-49.1 – 20-49.8)

In cases where the court must determine a child's biological mother, the court can enter an order of maternity using any one of the means listed above in section 1, or through other evidence that the woman gave birth to the child. Examples of such evidence includes the child's birth certificate, hospital records, medical records, testimony of people with knowledge of the birth, or statements of the mother. The standard of proof required for a determination of maternity is clear and convincing evidence. *See generally Code of Virginia §§ 20-49.1(A), 20-49.4. Complete and enter the order, DC-644. Provide copies to the parties, DCSE, and as directed per Code of Virginia § 20-49.8.*

Chapter 3. Disestablishment of Paternity (Code of Virginia § 20-49.10)

Beginning in 2001, the General Assembly changed the law allowing for disestablishment of paternity and a subsequent support obligation. A party may request to disestablish paternity for all, some, or one of his children. The individual seeking the test is obligated to pay for it, normally in advance. Code of Virginia § 20-49.10. An individual may

request genetic testing even if there was a previous acknowledgment of paternity, previous finding of paternity, or presumably even previous genetic tests.

A. Frequently Asked Questions:

1.Who pays for genetic testing in a disestablishment action?

The party requesting genetic testing after either an order of child support or a order determining paternity has been entered must pay for the testing in advance. There is no provision for the Commonwealth to pay for the testing. Code of Virginia § 20-49.10.

2. If a parent comes to court with paternity test results from a private testing company should those be used to disestablish paternity?

No. Unfortunately, through the Internet there are a plethora of companies advertising cheap and fast DNA testing with dubious accuracy and reliability. If a parent seeks to disestablish a child support obligation, the court should order testing done through the state-contracted laboratory.

3. Does a negative genetic testing result automatically disestablish a child support obligation?

No. As established by the protocol in Code of Virginia § 20-49.10, genetic testing is merely the first step in the court determining whether to disestablish a child support obligation. When in the child's best interest, or due to the factors listed in Code of Virginia § 20-49.10(i)-(iii), paternity would not be disestablished regardless of the genetic test results.

4. If there is only a support order but never any genetic tests, does a disestablishment petition need to be filed or merely a request for genetic testing?

A disestablishment petition would need to be filed. Inherent in any order of support is a determination of paternity. Even if genetic testing was not conducted in the past, the requirements of Code of Virginia § 20-49.10 apply.

B. Suggested Script:

3. a. Judge to the parties: A petition has been filed in this case to disestablish the paternity of Mr. _____ to the child _____, as established by the order of the _____ court dated _____. In a disestablishment action, if genetic testing indicates that Mr. _____ is not the father of the child _____, the court may, but does not have to, disestablish paternity. Prior to ordering genetic testing, the court must take certain evidence. *Swear in both parties*

3. b. Judge to the custodial parent or DCSE, if a public assistance case: Do you have evidence that Mr. _____

- filed disestablishment petition which has previously been denied or dismissed by this or any other court; or
- acknowledged paternity knowing that he was not the father; or
- legally adopted the child; or
- knew that the child was conceived through artificial insemination?

Allow the custodial parent or DCSE, if a DCSE case, present evidence regarding the above questions. Allow non-custodial parent to rebut the evidence. If the custodial parent or DCSE, by a preponderance of the evidence, proves any of the above exceptions as provided by Code of Virginia § 20-49.10(i)-(iii), do not order genetic tests and dismiss the disestablishment petition. If custodial parent or DCSE does not meet the burden of proof, continue to 3. c.

3. c. Judge to the parties: The court will enter an order for genetic testing. Both of you will receive a copy of the order. The order will set a date, time, and place for you to report for testing. There is also a telephone number should you have questions about the testing procedure. Prior to the genetic testing, the petitioner, _____, must pay for the genetic testing. The testing costs $_____. You must pay this amount prior to the test being conducted, or the test will not be performed. If you do not pay, your petition to disestablish will be dismissed.
When you go for testing you must have a photographic identification – such as a driver's license, military identification card, etc. – to be tested. The child also needs to be tested at the same time as the custodial parent. If you fail to appear for testing, or fail to comply with the testing requirements, either of you may be fined or jailed by this court. Also noted on the order is the date that you are to return to this court. You must appear on that date and time here at court, or you may be fined or jailed by this court. If the petitioner fails to pay for or complete genetic testing, or fails to appear on the continued date, the court may dismiss the petition.

The court will also appoint an attorney to represent the child _____ in this hearing. This attorney, known as a Guardian ad Litem, will interview both you and the child _____. You must cooperate with the requirements of the Guardian ad Litem. The Guardian ad Litem will report to this court what his or her investigation reveals regarding what is in the best interest of the child _____. The Guardian ad Litem will contact you directly to arrange a time for the interviews.

Complete form DC-624, specifying the test date, time, place, and date and time of the next court hearing. Give the parties, and DCSE if applicable, a copy of the test order. There is no provision in a disestablishment action for the Commonwealth to pay the cost of genetic testing; the petitioner must pay the costs. Schedule the continued disestablishment hearing far enough in advance to ensure that test results can be provided. If the safety of a party or child is in question, testing can be arranged at separate times. It is possible to merely test the putative father and child; this is known as

a "motherless draw." DCSE is also able to arrange for testing with parties in different offices and even different states. The court should additionally appoint a Guardian ad Litem for the child using form DC-514.

3. d. At the continued disestablishment hearing:
If genetic test results are filed with the court at least fifteen days prior to the hearing, there is no requirement for a witness to establish the foundation for the test results. Code of Virginia § 20-49.3(c). If a party wishes to have a witness available to testify as to the analysis of the genetic test results, he or she must motion the court to subpoena the witness at least seven days prior to the hearing. Code of Virginia § 20-49.3(c). The party requesting the witness to appear and testify may be required by the court to pay for the witnesses' costs and fees or provide security in advance to cover the costs and fees of the witness. Code of Virginia § 20-49.3(c).

3. d. (i). <u>If the genetic test results indicate that the non-custodial parent cannot be excluded as the father of the child (e.g., a more than 0% probability of paternity)</u>: Judge to the parties: The genetic test results indicate a _____% of probability of paternity. Genetic testing therefore cannot exclude Mr. _____ as the father of _____. Under the law of the Commonwealth of Virginia, paternity therefore cannot be disestablished. The petition to disestablish is hereby dismissed. *See Code of Virginia § 20-49.10. There is no requirement for 98% or higher degree of probability of paternity; rather if the individual cannot be excluded then paternity cannot be set aside. There is no requirement to enquire as to access of the father to the mother at the probable time of conception. Prepare an appropriate order dismissing the petition, provide copies to the parties and DCSE as applicable.*

3. d. (ii). <u>If the genetic test results indicate that the non-custodial parent can be excluded as the father of the child (e.g., a 0% probability of paternity)</u>: Judge to the parties: The genetic test results indicate a 0% of probability of paternity. Genetic testing therefore excludes Mr. _____ as the biological father of _____. Under the law of the Commonwealth of Virginia, however, the court does not have to disestablish paternity based on genetic test results alone. The court will consider the report of the child's Guardian ad Litem and the testimony of the parties, and then make its ruling. *Swear in the parties and Guardian ad Litem if present. If the Guardian ad Litem's report is written, give copies to the parties. Take evidence as to the parent/child relationship between the putative father and the child. Based on what is in the best interest of the child (see generally Code of Virginia § 20-108, et seq.,* Shoup v. Shoup*, 37 Va. 240 (2001),* Watkinson v. Henry*, 13 Va. App. 151 (1991), but see* Taylor v. Taylor*, 2004 Va. Cir. LEXIS 113 (2004)) make the appropriate ruling. If the court disestablishes paternity, a paternity order, DC-644, needs to be completed and processed per Code of Virginia § 20-49.8. The court will also need to terminate any obligation to provide current support, but only forward from the date of service of the disestablishment petition on the opposing party. Code of Virginia § 20-49.10. Any amount of child support accumulated prior to the date of service of the petition may not be retroactively modified and is an enforceable child support debt. See* Commonwealth

v. Richardson, *2002 Va. App. LEXIS 532 (Va. Ct. App. 2002),* Vaughn v. Cherry, *62 Va. Cir. 446 (2003), Code of Virginia § 20-49.10). If the court does not disestablish paternity, dismiss the petition to disestablish and take no further action.*

Chapter 4. Establishment of Support (Code of Virginia §§ 16.1-241, 16.1-290, 16.1-278.15)

A. Frequently Asked Questions:

1. The parties have an Administrative Support Order from the Virginia Division of Child Support Enforcement and have come to court wanting a court child support order. Should the court enter one?

An Administrative Support Order issued by the Virginia Division of Child Support Enforcement has the same force and effect as a court order. Code of Virginia § 63.2-1915. Even if the custodial parent closes his or her case with the Division, the Administrative Support Order continues in effect. Any court issued order of support, however, supersedes the Administrative Support Order. The court may either register the Administrative Support Order and, if appropriate, modify the amount of support or the court may enter a new order of support. Any child support arrearage accumulated under the Administrative Support Order remains valid and enforceable. *DCSE v. Richardson*, 2002 Va. App. LEXIS 532 (Unpl. Va. Crt. App. 2002). The accumulated Administrative Support Order's arrears should be included on any order entered by the court.

2. The parties have agreed on an amount of child support between themselves or with a mediator. Can the court enter the agreed amount on its order?

In each case, the court must run the child support guidelines to determine the amount of child support. The guideline amount is the rebuttable presumptive amount of child support; the court can however deviate from this amount by making written findings demonstrating that the guideline amount would be unjust or inappropriate for the particular case. Code of Virginia § 20-108.1(B).

3. A party is unemployed or underemployed; what amount of income should the court use to calculate the child support guidelines?

The court has wide latitude to impute income to a party that is unemployed or underemployed. Income should not be imputed if the party is unemployed or underemployed if he or she is caring for a non-school age child unless an imputed amount of child care services is included in the computation. Code of Virginia § 20-108.1(B)(3).

4. The non-custodial parent objects to being charged interest on any support arrears; may the court waive the interest on late payments?

Interest must be charged on any arrears unless the obligee (the custodial parent or the Commonwealth of Virginia if public assistance has been paid) waives the collection of interest in writing. Code of Virginia § 20-78.2.

5. Is there a duty to support step-children?

For there to be a child support order, there must be a duty to support the child. In Virginia, while both parents have a duty to support their child, *Commonwealth ex rel. Gray v. Johnson,* 7 Va. App. 614 (1989), the duty only extends to support biologically related or adopted children, not step-children.

6. What is the definition of a day for purposes of calculating support?

A day is a continuous 24-hour period in the care and custody of the parent, not a third party. *See* Code of Virginia § 20-108.2 (G)(3)(c), *Ewing v. Ewing,* 21 Va. App. 34 (1995), *Gaione v. Gaione,* 2002 Va. App. LEXIS 692 (2002).

7. Can child support continue past age 18?

Child support is owed for children under age 18, or if still a full-time high school student until either graduation or age 19, whichever occurs first. The parties can contract for child support to continue past a child's minority (*Cutshaw v. Cutshaw,* 220 Va. 638, 261 S.E.2d 52 (1979)) or support can continue to be owed if the child has physical or mental disabilities which prevent it from living independently and supporting his or herself (*Germek v. Germek,* 34 Va. App. 1 (2000), *Rinaldi v. Dumsick,* 32 Va. App. 330 (2000)).

8. If the child resides with neither parent, do the parents have to pay child support?

Both biological or adoptive parents would owe the duty to support the child (*Commonwealth ex rel. Gray v. Johnson,* 7 Va. App. 614 (1989)). If the party resides with a third-party, the income of the third-party custodial parent is not used in calculating the child support guidelines.

9. If a parent has other child support obligations, how much should be deducted from his or her income for the guideline calculations?

Only the actual amount paid to other children or family members would be deducted from the parent's income. If the parent is under an order to support other children, only the amount paid would be deducted up to the amount of current support ordered. Payments made against arrears are not deducted from gross income. Code of Virginia § 20-108.1(B)(1); Code of Virginia § 20-108.2(c).

10. What types of income are not included in calculating the child support guidelines?

All income, with only few exceptions, is combined to form the party's gross income – including bonuses, overtime, interests, and dividends.
(Code of Virginia 20-108.2(c)). The only exceptions are child support payments received by the party, welfare payments received, SSI payments received from the Social Security Administration, and income from a second job taken solely to pay against child support arrears. These items would not be counted as gross income for purposes of calculating child support.

All other sources of income, whether from wages from any employment, investment profits, interest, retirement or pension payments, annuities, Social Security SSA payments, Worker's Compensation payments, etc., are counted as income. *Howe v. Howe*, 30 Va. App. 207 (1999). Additionally, the value of goods or services provided in lieu of wages would be included in a party's gross income. *See Carmon v. Commonwealth*, 21 Va. App. 749 (1996).

11. How are health care costs for the child handled?

Health insurance costs are factored into the child support guidelines. Code of Virginia § 20-108.2(E). Health care expenditures in excess of $250.00 per year are split between the parents based upon the child support guideline percentage obligation but are no longer included in the guideline calculations. Code of Virginia § 20-108.2(D).

12. A parent wants all of his or her child support that he or she pays to be applied to one support obligation and not another. Can the court order that?

No. Code of Virginia § 20-79.1(J); *Cooper v. Commonwealth*, 2001 Va. App. LEXIS 201 (2001) stands for the proposition that all payments received by the DCSE be prorated among any open cases it has. The court may not choose which child or which case of several is to be supported first.

B. Suggested Script:

4. a. Judge to the parties: This issue before the court is determining the amount of support for the child (or children) _____.

4. a. (i) Judge to the parties: Has paternity for the child (or children) _____ been determined or was the child legally adopted by the non-custodial parent? *If paternity has not been determined for the child, it would need to be addressed prior to the entry of the support order. If the non-custodial parent is excluded as the biological parent of the child, or the child was not adopted by the non-custodial parent, the petition for a child support order naming the non-custodial parent as the responsible party should be dismissed.*

4. b. Judge to the parties: Normally support is only ordered for a child (or children) under the age of 18, or if still a full-time high school student until either graduation or age 19, whichever occurs first. Is the child (or children) _____ under the age of 18 or still a full-time high school student? *If yes, skip to 4. c. If not, enquire:* Have the parties contracted to provide support beyond the child's minority? *Cutshaw v. Cutshaw,* 220 Va. 638, 261 S.E.2d 52 (1979). Does the child have physical or mental disabilities which prevent him or her from living independently and supporting himself or herself? *Germek v. Germek,* 34 Va. App. 1 (2000), *Rinaldi v. Dumsick,* 32 Va. App. 330 (2000). *If yes, continue to 4. c.. If none of the above conditions are met, the petition for support should be dismissed.*

4. c. Judge to the parties: Who does the child (or children) reside with? *If the child does not reside with either parent, both parents have a duty to support the child and both should pay child support.* Commonwealth ex rel. Gray v. Johnson, *7 Va. App. 614 (1989). If the child resides with one parent, it is necessary to determine how many days a year the child resides with the other parent.*

How many days a year does the child live with the other parent?

- *If the child lives less than 90 days (a day is a continuous 24-hour period in the care and custody of the parent, not a third party; see Code of Virginia § 20-108.2 (G)(3)(c),* Ewing v. Ewing, *21 Va. App. 34 (1995),* Gaione v. Gaione, *2002 Va. App. LEXIS 692 (2002)) with the other parent, proceed to 4. d.*
- *If the child lives 90 or more days with the other parent, proceed to 4. e.*
- *If the parents have more than one child in common, with at least one child living with each parent, go to 4 f.*

4. d. Judge to the parties: Because the child (or children) lives with the non-custodial parent less than 90 days a year, the court will calculate child support based on the "sole custody guidelines." This calculation has nothing to do with the legal custody or visitation arrangements that you might have it; merely reflects in whose physical care the child is for the majority of the time. Child support in Virginia is set according to the child support guidelines – a mathematical approach of combining the parents' monthly incomes to determine the amount to be paid. Have guidelines already been prepared in this case? *If no, skip to 4. g. If yes, skip to 4. h.*

4. e. Judge to the parties: Because the child lives with the non-custodial parent more than 90 days a year, the court will calculate child support based on the "shared custody guidelines." This calculation has nothing to do with the legal custody or visitation arrangements that you might have; it merely reflects who physically cares for the children. Child support in Virginia is set according to the child support guidelines – a mathematical approach of combining the parents' monthly incomes to determine the amount to be paid. In a shared custody situation, the amount of support is further modified to reflect the amount of time the child is with each parent. The shared custody guidelines, however, do not apply unless the custodial parent's income is greater than 150% of the federal poverty rate. Code of Virginia § 20-108.2(G)(3)(d). In that case, the

court will calculate support based on the sole custody guidelines regardless of whether the child resides with the non-custodial parent more than 90 days a year. Have the guidelines already been prepared in this case? *If no, skip to 4. g. If yes, skip to 4. h.*

4. f. Judge to the parties: Because each of you have in your physical possession one or more of the children you have in common, this is referred to as "split custody" and the court will calculate child support based on the "split custody guidelines." This calculation has nothing to do with the legal custody or visitation arrangements that you might have, it merely reflects who physically cares for the children. Child support in Virginia is set according to the child support guidelines – a mathematical approach of combining the parents' monthly incomes to determine the amount to be paid. In a split custody situation, the amount is further modified to reflect the children in each of your custody. Code of Virginia § 20-108.2(G)(2). Have the guidelines already been prepared in this case? *If no, skip to 4. g. If yes, skip to 4. h.*

4. g. Judge to the parties: Reference Code of Virginia §§ 20-108.1-.2. The court will proceed to run the child support guidelines. I will ask each of you a series of questions, and allow you to ask questions of each other. *Note: If the custodial parent is not related to the child but rather serving in loco parentis, that individual's income is not used in calculating support. Only the incomes of adoptive or biologically related parents are included in guideline calculations.*

4. g. (i) Judge to each party individually: Are you currently working full-time? *If yes, continue. If no, skip to 4. g. (ii).* Where do you work? Do you have a copy of your most recent pay stub, W-2, or your last year's tax return? *For calculating child support, all calculations are made on a monthly basis. Only gross income is used. Gross income can be found on a W-2, tax return, or a pay stub which can be used to calculate the gross monthly income. For self-employed individuals, gross income would not include normal business expenditures or one-half of the self-employment tax they pay. If parties do not have their documentary evidence, the court can have them testify as to their gross income, or continue the matter and require the production of documents. Important points for calculating the child support guidelines include:*

- *The guidelines envision that the parties will be working full-time or at least near full-time. If a party is not working full-time without adequate justification, the court could impute income to be equivalent to full-time. See 4. g. (ii).*
- *All income, with only few exceptions, is combined to form the party's gross income. Code of Virginia 20-108.2 (c). The only exceptions are child support payments received by the party, welfare payments received, SSI payments received from the Social Security Administration, and income from a second job taken solely to pay against child support arrears. These items would not be counted as gross income for purposes of calculating child support. All other sources of income, whether from wages from any employment, investment profits, interest, retirement or pension payments, annuities, Social*

Security Disability Insurance, Worker's Compensation payments, etc., are counted as income. Howe v. Howe, *30 Va. App. 207 (1999). Additionally, the value of goods or services provided in lieu of wages would be included in a party's gross income. See* Carmon v. Commonwealth, *21 Va. App. 749 (1996).*

- *If one parent pays spousal support to the other parent, that amount would be deducted from the payor's gross income and added to the payee's gross income. Code of Virginia § 20-108.2(c).*
- *If a party pays spousal or child support to a third party, the actual amount paid per a court order of current support, but not arrears, would be subtracted from gross income. Payments made against arrears are not deducted from gross income. Code of Virginia §§ 20-108.1(B)(1) and 20-108.2(c).*
- *If a party has biologically-related children in his or her care, he/she would be entitled to a deduction from gross income for those children. There is no deduction for step-children or unrelated children. Code of Virginia § 20-108.1.*
- *If a custodial parent's income is less than 150% of the federal poverty amount, then regardless of the number of days the children reside with the non-custodial parent sole, not shared, custody guidelines would be used. Code of Virginia § 20-108.2(G)(3)(d).*
- *If the child receives benefits due to the parent receiving benefits, the amount of the child's benefits is included in gross income, and then deducted from that parent's share. If the amount deducted exceeds the ordered amount, the amount in excess may be used to reduce any arrearages owed by that parent. Code of Virginia § 20-108.2(C).*

The parties' modified gross incomes are then combined and compared to the table of child support at Code of Virginia § 20-108.2 to find the total amount of support due to the child. Skip to 4. g. (iii).

4. g. (ii). Judge to any party that is unemployed or underemployed: *Both parents have a duty to support their children.* Commonwealth ex rel. Gray v. Johnson, *7 Va. App. 614 (1989). If a parent is unemployed, or underemployed, it may be necessary for the court to impute income based on his/her past earning ability, education, and skills. If a parent's unemployment or underemployment is by choice or as a result of his or her voluntary action or inaction – even if the motive behind the action was to ultimately increase the amount of support to be provided – it may be necessary to impute. See, e.g., Code of Virginia § 20-108.1(B)(3),* Stubblebine v. Stubblebine, *22 Va. App. 703 (1996),* Antonelli v. Antonelli, *242 Va. 152 (1991). If a parent is not responsible for his/her unemployment, the court could either continue the matter to allow for the parent to secure employment or enter a temporary order based on parent's current income. If income is imputed, it may be necessary to likewise impute child care costs if the parent was providing child care for his/her own below school-age children. Code of Virginia § 20-108.1(B)(3). Any decision to impute income must be memorialized, in writing, on the*

order of support. The court believes it would be appropriate, under the circumstances, to impute income to Mr./Ms. _____ in the amount of $_____ per month for the purposes of calculating child support. *Go to 4. g. (i) to calculate the adjusted gross income.*

4. g. (iii). Judge to the parties: *See generally Code of Virginia §§ 20-108.1 - .2.* To the base amount of support there are two other amounts that may be added. First, does either parent provide health insurance for the child? *If health insurance is provided by either parent, the monthly cost of the insurance for the child alone (and not of any other person) is added to the base amount of child support. If the health insurance is at no cost (as in provided by the government, part of the parent's employment benefits, or due to a family policy for other family member and there was no cost to provide coverage the child) no amount would be added. If either parent also provides the child's dental or vision insurance, those monthly costs for the child alone can also be added. Any insurance provided by the non-custodial parent would be deducted from his or her portion of the child support amount at 4. g. (v) (below). Any party that is given credit for providing insurance on the child support guidelines should be required to provide a health insurance card for the child's use. If both parents wish to provide insurance for the child, the court should choose which parent will be responsible for providing it.*

Second, does either parent pay for childcare? *Normally for pre-school age children, the monthly cost of childcare for the child listed on the support order is also added to the child support obligation if paid by the custodial parent. Before- and after-school care, and a prorated amount for any summer programs that serve as childcare arrangements, may also be added to the child support obligation if paid for by the custodial parent. If the non-custodial pays for any of the childcare directly, that amount would be deducted from his or her portion of the child support amount at 4. g. (v) (below).*

4. g. (iv). Judge to the parties: The total amount of support, combined with any amounts that need to be added, will be shared by the parents based on their relative contribution to the total combined income. The custodial parent's share is $_____; the non-custodial parent's share is $_____ per month. *Normally, $65 per month is the statutory minimum for child support; while the amount of support ordered could be $0 (for instance, if the non-custodial parent's only income was from Social Security SSI payments due to a disability), it never can be a negative number. Any deviation from the guidelines needs to be done after calculating the presumptive amount of support, and a justification needs to be made in writing.* Richardson v. Richardson, *12 Va. App. 18 (1991).*

4. g. (v). Judge to the parties: *If the non-custodial parent directly pays for health insurance, child care, or extraordinary medical expenses of the supported child:* The non-custodial parent's share of the support obligation is reduced by $_____ for the amount he/she pays for health insurance, child care, or towards extraordinary medical expenses. The non-custodial parents share of the support obligation is then $_____ per month. *It is possible for the non-custodial parent to be ordered to*

pay $0 if the amount he/she is paying for health insurance, day care, or extraordinary medical expenses exceeds his/her share of the child support obligation. Under no circumstances, however, can the non-custodial parent's share be a negative number.

For unreimbursed health care costs that exceed $250.00 per year, the parents will share those expenses based upon their relative contribution to the total combined income. Those percentages are _____% for the custodial parent and _____% for the non-custodial parent.

4. g. (vi). Judge to the parties: *If the parties had a **shared custody** situation:* Because the non-custodial parent has the child for ninety days or more per year his/her child support obligation is reduced by his/her custody share – the percentage of a year he/she has physical custody of the child – to $_____ per month to reflect the custody arrangement. See Code of Virginia § 20-108.2(G)(3).

4. g. (vii). Judge to the parties: *If the parties had a **split custody** situation: The child support guidelines are calculated as indicated above with each parent serving as a custodial and non-custodial parent, with each receiving credit for the child(ren) in his/her physical custody. The amounts of the two are compared, and the parent with the greater obligation pays the difference between the two to the other parent. The paying parent is considered for child support purposes as the non-custodial parent. See Code of Virginia § 20-108.2(G)(2).*

4. g. (viii). Judge to the parties: Does either parent have a case open with the Division of Child Support Enforcement for this child? *If yes, skip to 4.g.(viii)(A). If no:* Does either parent request that the child support be paid through a wage withholding order? *In a non-DCSE case, if wage withholding is ordered, those payments would be made through the Treasurer of Virginia as well and may be prorated to fulfill other child support obligations of the non-custodial parent.* Cooper v. Commonwealth, *2001 Va. App. LEXIS 201 (2001). In a non-DCSE case the court should order a wage-withholding if either parent requests it or if the court believes that it would be in the best interest of the child.* Commonwealth ex rel. Gray v. Johnson, *7 Va. App. 614 (1989*) *(the best interests of the child are the paramount consideration in child support cases). Skip to 4.g.(viii)(B).*

4. g. (viii) (A). Judge to the parties: *If a DCSE case - the child support must be paid to the Treasurer of Virginia and a wage withholding order should always be authorized on the order in a DCSE case even if the non-custodial parent does not have an employer that can fulfill the order.* All payments made by the non-custodial parent must be made to the Treasurer of Virginia; the address for payment is on the child support order. Payments made directly to the custodial parent will not be counted towards the child support and will be considered a gift. *Fearon v. Fearon,* 207 Va. 927 (1967). If the non-custodial parent has other child support obligations through the DCSE, portions of each payment may be directed to fulfill those other obligations resulting in only partial payments to this child support obligation. Code of Virginia § 20-79.1(J)*; Cooper v. Commonwealth,* 2001

Va. App. LEXIS 201 (2001*).* In that situation, the non-custodial parent is responsible for paying the difference to ensure that he/she fully complies with this order. The court will authorize DCSE to enter an appropriate wage-withholding order. An employer must honor a wage withholding order and may not punish a non-custodial parent because of it. Code of Virginia § 63.2-1944. The employer may charge up to $5.00 per withholding per paycheck to handle the administrative costs of complying with the order. Code of Virginia § 20-79.3. *Skip to 4. g. (ix).*

4. g. (viii) (B). Judge to the parties: *If not a DCSE case, but the court wishes to enter a wage withholding order. See Code of Virginia § 20-79.2 et seq.* All payments made directly by the non-custodial parent must be made to the custodial parent, unless a subsequent court or administrative order requires payment through the Treasurer of Virginia. The court will enter a wage-withholding order; those payments will be deducted from the non-custodial parent's pay check and sent to the Treasurer of Virginia who will then issue a check to the custodial parent. If the non-custodial parent has other child support obligations through the Division of Child Support Enforcement, portions of each payment may be directed to fulfill those other obligations resulting in only partial payments to this child support obligation. Code of Virginia § 20-79.1(J)*; Cooper v. Commonwealth,* 2001 Va. App. LEXIS 201 (2001). In that situation, the non-custodial parent is responsible for paying the difference to ensure that he/she fully complies with this order. An employer must honor a wage withholding order and may not punish a non-custodial parent because of it. Code of Virginia § 63.2-1944. The employer may charge up to $5.00 per withholding per paycheck to handle the administrative costs of complying with the order. Code of Virginia § 20-79.3. *Skip to 4. g. (ix).*

4. g. (viii) (C). Judge to the parties: *If not a DCSE case and no wage-withholding order is entered.* All payments made by the non-custodial parent must be made to the custodial parent, unless a subsequent court or administrative order requires payment through the Treasurer of Virginia. No wage withholding order will be entered at this time by the court.

4. g. (ix). Judge to the parties: Pursuant to the law of the Commonwealth of Virginia, the effective date of this order for child support is the date the action was filed with the court. Code of Virginia §20-108.1. Because of that, there is an arrearage of $_____. The court will enter an arrears payment order of $_____ per month to eliminate that arrearage. Once the arrearage is eliminated, there will be no arrears payment. If the arrearage is not eliminated, or if the current child support obligation of $_____ per month is not fulfilled, the custodial parent or DCSE should file a show cause in this matter to enforce the order. *The court should set an arrears payment designed to pay off the arrearage in a reasonable amount of time while being cognizant of the non-custodial parent's ability to pay.*

4. h. Judge to the parties: If either party believes that the court has made an error in setting the child support amount, that party has two options. First, within thirty days of the child support order being signed and entered, that party may request through the

clerk's office a rehearing of this matter. The case would come back to this court and be heard in front of me. The parent would have the burden to persuade the court that it has made an error and a different order be entered. Code of Virginia § 16.1-97.1 The other option is within ten days of the child support order being signed and entered, that parent may appeal this order to the circuit court. In the circuit court, there would be a different judge and the decision of this court would not be binding on that judge. Code of Virginia § 16.1-106. If a parent wishes to appeal this decision, I will set an appeal bond as required by the law of the *Commonwealth of Virginia*. *ex rel. May v. Walker,* 253 Va. 319 (1997)*; Espinoza v. Espinoza,* 2003 Va. App. LEXIS 426 (2003). Until a new order of support is entered, however, this order will remain in effect and may be enforced until it is replaced with another order. Code of Virginia § 16.1-106. You, the parents, may not alter any aspect of this order such as change the amount of support, waive support, or cancel this order – only the court can make changes to an order; if you want changes made, you will have to motion the court to make them. *Capell v. Capell,* 165 Va. 45 (1935)*;* Code of Virginia § 20-74.

Chapter 5: Modification of Support (Code of Virginia § 16.1-241, 20-88.77:1)

A. Frequently Asked Questions:

1. How can a support order be modified?

A child support order can be modified to allow for a wage withholding order (section 5.1 below), to allocate a tax exemption for the supported child (section 5.2 below), or to modify the amount of support (section 5.3 below).

2. The parties have agreed on an amount of child support between themselves or with a mediator. Can the court enter the agreed amount on its order?

In each case, the court must run the child support guidelines to determine the amount of child support. The guideline amount is the rebuttable presumptive amount of child support; the court can however deviate from this amount by making written findings demonstrating that the guideline amount would be unjust or inappropriate for the particular case. Code of Virginia § 20-108.1 (B).

3. A party is unemployed or underemployed; what amount of income should the court use to calculate the child support guidelines?

The court has wide latitude to impute income to a party that is unemployed or underemployed. Income should not be imputed if the party is unemployed or underemployed if he or she is caring for a non-school age child unless an imputed amount of child care services is included in the computation. Code of Virginia § 20-108.1 (B) (3).

4. The non-custodial parent objects to being charged interest on any support arrears; may the court waive the interest on late payments?

Interest must be charged on any arrears unless the obligee (the custodial parent or the Commonwealth of Virginia if public assistance has been paid) waives the collection of interest in writing. Code of Virginia § 20-78.2.

5. Is there a duty to support step-children?

For there to be a child support order, there must be a duty to support the child. In Virginia, while both parents have a duty to support their child, *Commonwealth ex rel. Gray v. Johnson*, 7 Va. App. 614 (1989), the duty only extends to support biologically related or adopted children, not step-children.

6. What is the definition of a day for purposes of calculating support?

A day is a continuous 24-hour period in the care and custody of the parent, not a third party. *See* Code of Virginia § 20-108.2 (G)(3)(c), *Ewing v. Ewing*, 21 Va. App. 34 (1995), *Gaione v. Gaione*, 2002 Va. App. LEXIS 692 (2002).

7. Can child support continue past age 18?

Child support is owed for children under age 18, or if still a full-time high school student until either graduation or age 19, whichever occurs first. The parties can contract for child support to continue past a child's minority (*Cutshaw v. Cutshaw*, 220 Va. 638, 261 S.E.2d 52 (1979)) or support can continue to be owed if the child has physical or mental disabilities which prevent it from living independently and supporting his or herself (*Germek v. Germek*, 34 Va. App. 1 (2000), *Rinaldi v. Dumsick*, 32 Va. App. 330 (2000)).

8. If the child resides with neither parent, do the parents have to pay child support?

The biological or adoptive parents would owe the duty to support the child (*Commonwealth ex rel. Gray v. Johnson*, 7 Va. App. 614 (1989)). If the party resides with a third-party, the income of the third-party custodial parent is not used in calculating the child support guidelines.

9. If a parent has other child support obligations, how much should be deducted from his or her income for the guideline calculations?

Only the actual amount paid to other children or family members would be deducted from the parent's income. If the parent is under an order to support other children, only the amount paid would be deducted up to the amount of current support ordered. Payments made against arrears are not deducted from gross income. Code of Virginia § 20-108.1(B)(1); Code of Virginia § 20-108.2(c).

10. What types of income are not included in calculating the child support guidelines?

All income, with only few exceptions, is combined to form the party's gross income – including bonuses, overtime, interests, and dividends. Code of Virginia 20-108.2 (c). The only exceptions are child support payments received by the party, welfare payments received, SSI payments received from the Social Security Administration, and income from a second job taken solely to pay against child support arrears. These items would not be counted as gross income for purposes of calculating child support.

All other sources of income, whether from wages from any employment, investment profits, interest, retirement or pension payments, annuities, Social Security Disability Insurance, Worker's Compensation payments, etc., are counted as income. *Howe v. Howe*, 30 Va. App. 207 (1999). Additionally, the value of goods or services provided in lieu of wages would be included in a party's gross income. See *Carmon v. Commonwealth*, 21 Va. App. 749 (1996).

11. How are health care costs for the child handled?

Health insurance costs are factored into the child support guidelines. Code of Virginia § 20-108.2(E). Health care expenditures, in excess of $250.00 per year, are split between the parents based upon the child support guideline percentage obligation but are no longer included in the guideline calculations. Code of Virginia § 20-108.2(D).

12. A parent wants all of his or her child support that he or she pays to be applied to one support obligation and not another. Can the court order that?

No. Code of Virginia § 20-79.1(J); *Cooper v. Commonwealth*, 2001 Va. App. LEXIS 201 (2001) stands for the proposition that all payments received by the Division of Child Support Enforcement be prorated among any open cases it has. The court may not choose which child or which case of several is to be supported first.

13. When may a wage withholding order be entered?

A wage withholding order may be entered if (1) the non-custodial requests it, (2) the parties agree or have agreed to it, (3) there are child support arrears, or (4) due to the non-custodial parent's payment history. See Code of Virginia § 20-79.1.

B. Suggested Script – Wage Withholding Order:

5.1. *See Code of Virginia § 20-79.1. A wage withholding order may be entered if (1) the non-custodial requests it, (2) the parties agree or have agreed to it, (3) there are child support arrears, or (4) due to the non-custodial parent's payment history. If the non-custodial parent requests the wage-withholding or the parties both agree to it, enter the wage withholding order. Skip to 5. 1. a or b below. If not, give the custodial parent or DCSE the opportunity to prove, by a preponderance of the evidence, that there are either*

child support arrears or that the non-custodial parent's payment history, while not having any arrears currently, has been sporadic enough to justify a wage-withholding order. Enter the wage withholding order on form DC 645. If the custodial parent or DCSE meets its burden, proceed to 5. 1. a or b below. If not, dismiss the request.

5. 1. a: Judge to the parties: *If the court decides to enter a wage withholding order on a DCSE case.* The court will authorize DCSE to issue a wage withholding order. If the non-custodial parent has other child support obligations through the DCSE, portions of each payment may be directed to fulfill those other obligations resulting in only partial payments to this child support obligation. In that situation, the non-custodial parent is responsible for paying the difference to DCSE to ensure that he/she fully complies with this order. Code of Virginia § 20-79.1(J)*; Cooper v. Commonwealth,* 2001 Va. App. LEXIS 201 (2001). An employer must honor a wage withholding order and may not punish a non-custodial parent because of it. Code of Virginia § 63.2-1944. The employer may charge up to $5.00 per withholding per paycheck to handle the administrative costs of complying with the order. Code of Virginia § 20-79.3.

5. 1. b: Judge to the parties: *If the court decides to enter a wage withholding order on a non-DCSE case.* The court will issue a wage withholding order. The court will enter a wage-withholding order, which payments will be deducted from the non-custodial parent's pay check and sent to the Treasurer of Virginia, who will then issue a check, to the custodial parent. If the non-custodial parent has other child support obligations through the DCSE, portions of each payment may be directed to fulfill those other obligations, resulting in only partial payments to this specific child support obligation. In that situation, the non-custodial parent is responsible for paying the difference to the custodial parent to ensure that he/she fully complies with this order. Code of Virginia § 20-79.1(J)*; Cooper v. Commonwealth,* 2001 Va. App. LEXIS 201 (2001). An employer must honor a wage withholding order and may not punish a non-custodial parent because of it. *Code of Virginia § 63.2-1944.* The employer may charge up to $5.00 per withholding per paycheck to handle the administrative costs of complying with the order. Code of Virginia § 20-79.3. *The effective date of any modification is the date the motion was served on the other party.* Code of Virginia § 20-108.

C. Suggested Script – Changing Tax Exemption:

5. 2. Judge to the parties: *See Code of Virginia § 20-108.1(E). A court may also modify a child support order by changing which parent may claim the child for tax purposes. Even if the parties have previously agreed upon who would claim the child on his/her taxes, the court can allot the exemption on motion of either party. Typically, the party which provides the majority of support, whether monetary or not, would be allocated the tax exemption. Changing the tax exemption will alter the relative incomes of the parties and might qualify as a material change of circumstances warranting a modification in the amount of child support. The party motioning for the change of a tax exemption bears the burden to prove by a preponderance of the evidence that the*

modification is warranted. The effective date of any modification is the date the motion was served on the other party. Code of Virginia § 20-108.

D. Suggested Script – Modifying the Amount of Support:

5. 3. Judge to parties: *The most common way a child support order can be modified is by changing the amount of child support. Either parent may request a review of the amount of support. To get the modification, the party asking for it must normally prove, by a preponderance of the evidence, that there has been a "material change of circumstances" since the previous child support order was entered in either the needs of the child or the ability of either parent to support the child.* Hiner v. Hadeed, *15 Va. App. 575 (1993);* Barnhill v. Brooks, 15 *Va. App. 696 (1993);* Head v. Head, *24 Va. App. 166 (1997). If the previous child support order was entered prior to 1989, there is no requirement to prove a material change of circumstances if the subsequently calculated guidelines indicate that there is a significant difference between the original and subsequently calculated amounts.* Slonka v. Pennline, *17 Va. App. 662 (1994);* Barnhill v. Brooks, *15 Va. App. 696 (1993). While voluntary acts by either party can justify increasing support (such as either parent securing better paying employment, winning the lottery, etc.), voluntary acts by the party requesting the modification normally cannot justify a decrease in support. See, e.g.,* Maya v. Maya, *1996 Va. App. LEXIS 8 (1996). Subsequent born children cannot serve as a basis for a modification.* Nichols v. Nichols, *1998 Va. App. LEXIS 244 (1998); Code of Virginia § 20-108.2 (C).*

If a required material change of circumstance has occurred, the court is to calculate the child support guidelines to determine if the amount of child support changes. Guidelines are calculated in the same manner as with initial orders of support (see section 4. a. et seq., supra) with one exception. Some courts will not consider subsequent born children of the moving party when calculating his/her gross income, as those children are the result of a voluntary act and should not be the basis for modifying support of the children named in the child support order. Guidelines must be recalculated prior to any deviations being made in the amount of support. Barnhill v. Brooks, *15 Va. App. 696 (1993). The effective date of any modification is the date the motion was served on the other party. Code of Virginia § 20-108. When the court enters a new support order, it can order a party to provide health insurance or authorize a wage withholding as needed.*

5. 3. a. Judge to the parties: Mr./Ms. _____ has motioned the court to review the order of child support issued by _____ court on _____ (date). That order of support provides that Mr./Ms. _____ will pay $_____ every _____ (period) for the current support of the child(ren) _____ and $_____ against any arrears that may exist. *If the order of child support predates 1989 skip to 5. 3. b. (1).* For the court to change the order of support, there must have been a material change of circumstances since the previous order was entered. *Sines v. Sines,* 2002 Va. App. LEXIS 32 (2002). The party that has motioned the court for a review must demonstrate by a preponderance of the evidence that there has been a

material change of circumstances since the date of the last order that under the law of the Commonwealth of Virginia justifies the modification. Both parties will have the opportunity to present evidence, testimony, and argument regarding a material change of circumstances, and whether any such changes were voluntary or involuntary. A party cannot, by a voluntary action or inaction, create a material change of circumstance that will negatively prejudice the child(ren) being supported. Ultimately, the court will use the best interest of the child to determine whether there should be a modification or not. Code of Virginia § 20-108. *Allow the parties to litigate the issue of whether there has been a material change of circumstances. Important points on material changes of circumstances include:*

- *A voluntary change of employment (or voluntary unemployment) that reduces a party's income, even if designed to increase income, cannot serve as a material change of circumstance.* Antonelli v. Antonelli, *242 Va. 152 (1991)*

- *Slight fluctuations of income do not warrant a material change of circumstances.* Head v. Head, *24 Va. App. 166 (1997).*

- *A support order can always be modified; contracts or decrees prohibiting modification are invalid*. Kaplan v. Kaplan, *21 Va. App. 542 (1996).*

- A party seeking a reduction in support payments *must make a full and clear disclosure relating to his ability to pay. He must also show that his lack of ability to pay is not due to his own voluntary act or because of his neglect.* Luciani v. Luciani, *1995 Va. App. LEXIS 264 (1995);* Edwards v. Lowry, *232 Va. 110 (1986).*

- *If a party cannot find, despite all good faith efforts, employment that pays the same or better than previous employment, that is not voluntary under-employment.* Richards v. Richards, *1994 Va. App. LEXIS 376 (1994).*

- *Incarceration is voluntary unemployment and does not constitute a material change of circumstances.* Layman v. Layman, *25 Va. App. 365 (1997).*

5. 3. b. Judge to the parties: *If the moving party fails to prove, by a preponderance of the evidence, that there has been a material change of circumstances, the motion to review should be denied. If the moving party meets its burden, and it is not refuted by the non-moving party, the court will need to calculate the child support guidelines and determine if there is a change in the amount of child support:* The party requesting the modification has met his/her initial burden of proving that there has been a material change of circumstance since the previous child support order was entered. The court will now calculate the child support guidelines to determine if the amount of support has changed. *See section 4. a. et seq., supra. If the child support guidelines do not indicate a change in the amount of support, or a change in the direction opposite than the desire of the moving party, allow the moving party the option of withdrawing his/her motion for a*

review. If the amount of support does change in the direction requested by the moving party or they do not withdraw the motion, prepare a new support order. Any deviation from the guidelines needs to be done after calculating the presumptive amount of support, and a justification needs to be made in writing. Richardson v. Richardson*, 12 Va. App. 18 (1991).*

5. 3. b. (1). Judge to the parties: As the child support order predates the changes to the schedule of child support, the court will calculate the guidelines and compare that amount to the current amount of support. *See section 4. a. et seq., supra. If the child support guidelines do not indicate a change in the amount of support, or a change in the direction opposite than the desire of the moving party, allow the moving party the option of withdrawing his/her motion for a review. If the amount of support does change in the direction requested by the moving party or he or she does not withdraw the motion, prepare a new support order. Any deviation from the guidelines needs to be done after calculating the presumptive amount of support, and a justification needs to be made in writing.* Richardson v. Richardson*, 12 Va. App. 18 (1991).*

5. 3. c. Judge to the parties: If either party believes that the court has made an error in setting the child support amount, that party has two options. First, within thirty days of the child support order being signed and entered, that party may request through the clerk's office a rehearing of this matter. The case would come back to this court and be heard in front of me. The parent would have the burden to persuade the court that it has made an error and a different order be entered. Code of Virginia § 16.1-97.1 The other option is within ten days of the child support order being signed and entered, that parent may appeal this order to the Circuit Court. In the Circuit Court, there would be a different judge and the decision of this court would not be binding on that judge. Code of Virginia § 16.1-106. If a parent wishes to appeal this decision, I will set an appeal bond as required by the law of the Commonwealth of Virginia. *Commonwealth ex rel. May v. Walker,* 253 Va. 319 (1997)*; Espinoza v. Espinoza,* 2003 Va. App. LEXIS 426 (2003). Until a new order of support is entered, however, this order will remain in effect and may be enforced until it is replaced with another order. Code of Virginia § 16.1-106. You, the parents, may not alter any aspect of this order such as change the amount of support, waive support, or cancel this order – only the court can make changes to an order; if you want changes made, you will have to motion the court to make them. *Capell v. Capell*, 165 Va. 45 (1935), Code of Virginia § 20-74.

Chapter 6: Enforcement/Rule to Show Cause (Code of Virginia §§ 16.1-241(E), (P); 16.1-278.16; 16.1-292; 20-88.68; 20-115, 20-61)

A. Frequently Asked Questions:

1. How does a Rule to Show Cause for contempt differ from a prosecution under § 20-61 for non-support?

Normally, a Rule to Show Cause is civil in nature (*Florence v. Roberts*, 233 Va. 297 (1987)), expect for those specifically brought under Code of Virginia § 20-61. The hallmark of a civil contempt show cause is the provision for a "purge clause" – enabling the contemnor to be immediately released from jail by paying his or her purge. In this way, the contemnor carries the keys to the jail in his/her pocket. *Penfield Co. v. SEC*, 330 U.S. 585, 590 (1947). If no purge clause is provided, the action will be treated as a criminal contempt case. *Kessler v. Commonwealth*, 18 Va. App. 14 (1994). In a civil child support show cause, there is no right for counsel to be appointed unlike in a criminal show cause (*Autry v. Bryan*, 224 Va. 451 (Va. 1982)) and either party may appeal a court's determination. *Florence v. Roberts*, 233 Va. 297 (1987). Even if an appeal of an order is pending, enforcement may continue unless suspended. *Fearon v. Fearon*, 207 Va. 927 (1967), *Decker v. Decker*, 17 Va. App. 562 (1994).

Actions brought under Code of Virginia § 20-61 are a criminal prosecution. In a criminal contempt case, the defendant is entitled to a jury trial if the sentence exceeds 6 months. *Kessler v. Commonwealth*, 18 Va. App. 14 (1994). If no purge clause is provided, the action will be treated as a criminal contempt case. *Kessler v. Commonwealth*, 18 Va. App. 14 (1994). The defendant would have the right to counsel ((*Autry v. Bryan*, 224 Va. 451 (1982)) and would be able to appeal the sentence as with any other criminal conviction.

2. What can a Rule to Show Cause be filed for in child support cases?

A show cause may be brought for any violation of the order, including failure to pay the correct amount of support, failure to pay the correct party as ordered (*Johnson v. Johnson*, 1 Va. App. 330 (1986)), failure to make timely payments (*Serrano v. Serrano*, 2000 Va. App. LEXIS 537 (2000)) or violation of the terms of an agreement that was incorporated into an order (*Goldin v. Goldin*, 34 Va. App. 95 (2000)).

3. What sentence may be imposed in a Rule to Show Cause?

An individual found in contempt may be given an indeterminate sentence without specifying an amount of time, but not to exceed 12 months (*Thompson v. Commonwealth ex rel. Hornes*, 2003 Va. App. LEXIS 42 (2003)) and the sentence may run concurrent or consecutive to other sentences (*Thompson v. Commonwealth ex rel. Hornes*, 2003 Va. App. LEXIS 42 (2003)). Actions brought under Code of Virginia § 20-61 are punished as Class 1 misdemeanors.

4. What burden of proof is used in a Rule to Show Cause for failure to pay child support?

The initial burden is on the custodial parent (or DCSE if a DCSE case) to demonstrate, by a preponderance of the evidence, that there is a child support order and that payments have not conformed to that order. If the custodial parent/DCSE meets that burden, the burden then shifts to the non-custodial parent to justify the non-compliance. *Frazier v. Commonwealth*, 3 Va. App. 84 (1986), *Commonwealth ex rel. Graham v. Bazemore*, 32

Va. App. 451, 455-56 (2000), *Shackleford v. Franck,* 1994 Va. App. LEXIS 752 (1994), *Alexander v. Alexander,* 12 Va. App. 691, 696 (1991)).

5. What must the non-custodial parent demonstrate to prevail on a Rule to Show Cause?

To prevail, the non-custodial parent either must demonstrate that he or she is in full or substantial compliance with the child support order or show that any noncompliance was through no fault, action, or inaction of his/her own. *Commonwealth ex rel. Graham v. Bazemore,* 32 Va. App. 451, 455-56 (2000), *Barnhill v. Brooks,* 15 Va. App. 696 (1993), *Laing v. Commonwealth,* 205 Va. 511 (1964), *Branch v. Branch,* 144 Va. 244, 250, 251 (1926), *Lindsey v. Lindsey,* 158 Va. 647 (1932).

6. What foundation must be laid for DCSE records of support payments?

Pursuant to Code of Virginia § 20-60.2, certified financial records of DCSE are self-authenticating and normally require no foundation to be laid prior to admission.

7. What defenses routinely **fail** in Rule to Show Cause hearings?

- That the parties have agreed to a different amount of support than the amount specified in the order. *Smiley v. Erickson,* 29 Va. App. 426 (1999); *Capell v. Capell,* 164 Va. 45 (1935).

- That payments should go to only one of the non-custodial parent's cases and not be prorated. Code of Virginia § 20-79.1(J); *Cooper v. Commonwealth,* 2001 Va. App. LEXIS 201 (2001).

- That the child support debt must first be reduced to a judgment prior to a Rule to Show Cause being filed. *Commonwealth v. Skeens,* 18 Va. App. 154 (1994); Code of Virginia § 20-78.2 (the entry of a support order creates a final judgment as a matter of law; there is no requirement to first reduce an arrearage to an order of judgment prior to enforcement; child support payments become vested as they accrue).

- That interest cannot be charged on the debt. Code of Virginia § 20-78.2 (interest shall be collected on support arrearages unless the custodial parent, in writing, waived the collection of interest *a priori*).

- That the non-custodial parent chose to pay a different party or provide in-kind support instead of what was specified in the order. *Acree v. Acree,* 2 Va. App. 151 (1986).

- That the statute of limitations has run or laches applies. *Richardson v. Moore,* 217 Va. 422 (1976) quoting *Fearon v. Fearon,* 207 Va. 927 (1967); *Arthur v. Commonwealth ex rel. Smith,* 1999 Va. App. LEXIS 62 (1999);

Bennett v. Commonwealth ex rel. Waters, 15 Va. App. 135 (1992); *Arthur v. Commonwealth ex rel. Smith*, 1999 Va. App. LEXIS 62 (1999).

- That the non-custodial parent has a right to a jury trial in a civil show cause *Gardner v. Commonwealth ex rel. Gardner*, 1994 Va. App. LEXIS 324 (1994).

- That the non-custodial parent merely alleges insolvency; it must be proven. *Lindsey v. Lindsey*, 158 Va. 647 (1932).

- That the non-custodial parent has been denied or lacks visitation. *Commonwealth v. Hogge*, 16 Va. App. 520 (1993), *Newton v. Newton*, 202 Va. 515 (1961).

- That the non-custodial parent was not given notice prior to public assistance being given to a child. *Morris v. Commonwealth*, 13 Va. App. 77 (1991).

- That the non-custodial parent is unable to pay due to their own action or inaction. *Commonwealth ex rel. Graham v. Bazemore*, 32 Va. App. 451, 455-56 (2000), *Barnhill v. Brooks*, 15 Va. App. 696 (1993), *Laing v. Commonwealth*, 205 Va. 511 (1964), *Branch v. Branch*, 144 Va. 244, 250, 251 (1926), *Lindsey v. Lindsey*, 158 Va. 647 (1932).

- That the non-custodial parent's other obligations to himself or herself, new family members, etc. takes priority over the child to be supported. *Branch v. Branch*, 144 Va. 244 (1926).

8. What types of sentences may be given in a Rule to Show Cause for failure to pay child support?

The sentence may be suspended, delayed imposition (including a subsequent review date), delayed reporting (to allow the non-custodial parent time to raise the purge bond required by the court), or immediate incarceration. Code of Virginia § 20-72.

9. What types of bonds are required if a person is found in contempt for failure to pay child support?

The sentence must contain at a minimum a purge bond and an appeal bond. *Commonwealth ex rel. May v. Walker*, 253 Va. 319 (1997). The appeal cannot be bifurcated so as to preclude the necessity of posting an appropriate bond for the amount of the child support arrears. *Mahoney v. Mahoney*, 34 Va. App. 63, 66-67 (2000).

B. Suggested Script:

6. a. Judge: The issue before the court is an allegation that the non-custodial parent, Mr./Ms. _____, failed to follow the requirements of a lawful child support order. The initial burden in this action is on the custodial parent (or DCSE if a DCSE case) to demonstrate, by a preponderance of the evidence, that there is a child support order and that payments have not conformed to that order. If the custodial parent/DCSE meets that burden, the burden then shifts to the non-custodial parent to justify the non-compliance. *Frazier v. Commonwealth*, 3 Va. App. 84 (1986), *Commonwealth ex rel. Graham v. Bazemore*, 32 Va. App. 451, 455-56 (2000), *Shackleford v. Franck*, 1994 Va. App. LEXIS 752 (1994), *Alexander v. Alexander*, 12 Va. App. 691, 696 (1991)).

The non-custodial parent, Mr./Ms. _____, will then have an opportunity to call witnesses, introduce evidence, testify, examine opposing witnesses, and give argument in support of his/her defense. *Street v. Street*, 24 Va. App. 14 (1997). If the non-custodial parent is/was unable to comply with the order of support, <u>through no fault, action, or inaction of his/her own</u>, he/she will not be held in contempt. *Commonwealth ex rel. Graham v. Bazemore*, 32 Va. App. 451, 455-56 (2000), *Barnhill v. Brooks*, 15 Va. App. 696 (1993), *Laing v. Commonwealth*, 205 Va. 511 (1964), *Branch v. Branch*, 144 Va. 244, 250, 251 (1926), *Lindsey v. Lindsey*, 158 Va. 647 (1932).

6. b. Judge to custodial parent or DCSE if their case: The first issue the custodial parent/DCSE must prove is that there is an order or obligation to provide support for the child _____. *If the court issued or has a copy of the support order, it can take judicial notice of the order or allow the custodial parent or DCSE to proffer the order unless its validity is challenged.*

The second issue is the status of support payments. The custodial parent/DCSE will now have the opportunity to present evidence and testimony regarding the status of the support payments. *Pursuant to Code of Virginia § 20-60.2, certified financial records of DCSE are self-authenticating and normally require no foundation to be laid prior to admission. If the custodial parent/DCSE fails to demonstrate that there is a valid child support order a lack of full compliance as required pursuant to a valid order, then the show cause should be dismissed. If the burden is met by a preponderance of the evidence, the burden then shifts to the non-custodial parent to either refute the initial evidence or offer an acceptable justification for non-compliance.*

6. c. Judge to the non-custodial parent: Mr./Ms. _____, you now have the opportunity to refute the initial evidence of the custodial parent/DCSE or to produce evidence as to your inability, through no fault, action, or inaction of your own, to comply with the child support order. *The non-custodial parent has the burden, by a preponderance of the evidence, to show that either there is/has been no valid order of support, or prove an appropriate justification for not complying with the order of support. Some commonly rejected defenses offered in show causes include:*

- *Non-custodial parents may not argue that the parties have agreed to a different amount of support than the amount specified in the order.* Smiley v. Erickson, *29 Va. App. 426 (1999);* Capell v. Capell, *164 Va. 45 (1935).*

- *Non-custodial parents may not argue that their payments must be used to satisfy only one or applied to only one of their child support obligations; DCSE is obligated to prorate monies it receives among open cases. Code of Virginia § 20-79.1(J);* Cooper v. Commonwealth, *2001 Va. App. LEXIS 201 (2001).*

- *Non-custodial parents may not argue that prior to a show cause being filed/litigated, that the child support arrears must be reduced to a judgment. The entry of a support order creates a final judgment as a matter of law; there is no requirement to first reduce an arrearage to an order of judgment prior to enforcement; child support payments become vested as they accrue.* Commonwealth v. Skeens, *18 Va. App. 154 (1994); Code of Virginia § 20-78.2.*

- *Non-custodial parents may not argue that they are not liable for interest or that the other party chose to waive interest. Interest shall be collected on support arrearages unless the custodial parent, in writing, waived the collection of interest* a priori. *Code of Virginia § 20-78.2.*

- *Non-custodial parents normally may not be given credit for non-order conforming payments (e.g., if the order requires payment to DCSE, payments made directly to the custodial parent would be non-conforming and might not be given credit against the obligation).* Acree v. Acree, *2 Va. App. 151 (1986).*

- *Non-custodial parents may not argue that the custodial parent/DCSE waited too long to enforce the order of child support; laches is not a defense to the enforcement of a child support order.* Richardson v. Moore, *217 Va. 422 (1976) quoting* Fearon v. Fearon, *207 Va. 927 (1967);* Arthur v. Commonwealth ex rel. Smith, *1999 Va. App. LEXIS 62 (1999). Likewise there is no statute of limitations barring the enforcement of a child support order.* Bennett v. Commonwealth ex rel. Waters, *15 Va. App. 135 (1992);* Arthur v. Commonwealth ex rel. Smith, *1999 Va. App. LEXIS 62 (1999).*

- *Non-custodial parents have no right to a jury trial in a civil show cause.* Gardner v. Commonwealth ex rel. Gardner, *1994 Va. App. LEXIS 324 (1994).*

- *Non-custodial parents must prove insolvency, not merely allege it.* Lindsey v. Lindsey, *158 Va. 647 (1932).*

- *Non-custodial parents may not argue that denial or lack of visitation justifies non-payment of child support.* Commonwealth v. Hogge, *16 Va. App. 520 (1993),* Newton v. Newton, *202 Va. 515 (1961).*

- *Non-custodial parents may not argue that they be given notice prior to public assistance being given to a child; only notice and an opportunity to be heard prior to the parent being required to repay it.* Morris v. Commonwealth, *13 Va. App. 77 (1991).*

- *Non-custodial parents may not argue that they should be excused from complying with the order of support if they caused, through an action or inaction on their part, their inability to provide support.* Commonwealth ex rel. Graham v. Bazemore, *32 Va. App. 451, 455-56 (2000),* Barnhill v. Brooks, *15 Va. App. 696 (1993),* Laing v. Commonwealth, *205 Va. 511 (1964),* Branch v. Branch, *144 Va. 244, 250, 251 (1926),* Lindsey v. Lindsey, *158 Va. 647 (1932).*

- *Non-custodial parents may not argue that they have other obligations (family, business, paying bills, to themselves, etc.) that take priority – a non-custodial parent's* ***first*** *duty is the support of those for whose existence he/she is responsible for; child support is paid first before anything else.* Branch v. Branch, *144 Va. 244 (1926).*

6. d. Judge: *If, by a preponderance of the evidence, the non-custodial parent meets his/her burden of refuting the evidence of the custodial parent or offers an appropriate justification for non-compliance, the show cause should be dismissed.*

6. d. (i) Judge to the parties: The court finds, based on all of the evidence, that it is appropriate to dismiss the show cause and remove the matter from the docket. Dismissing a show cause does not, however, affect a child support order or the obligation to provide support it creates. If the custodial parent/DCSE is dissatisfied with the court's decision, he/she/it may appeal this court's order to the circuit court and the matter would be heard by a different judge in a different court.

If the custodial parent wishes to appeal the dismissal of a show cause, the court would need to set an appeal bond to allow the circuit court to have jurisdiction over the matter. Commonwealth ex rel. May v. Walker, *253 Va. 319 (1997). No other bonds would be required; no bond would be required of DCSE.*

6. e. Judge: *If the non-custodial parent does not meet his/her burden of proof by a preponderance of the evidence of either refuting the evidence of the custodial parent/DCSE or providing a sufficient justification for failing to comply with the order of support, then he/she should be found in contempt and given an appropriate sentence.*
The sentence may be suspended, delayed imposition (including a subsequent review date), delayed reporting (to allow the non-custodial parent time to raise the purge bond required by the court), or immediate incarceration. Code of Virginia § 20-72. Regardless of the sentence type, it must contain a purge bond for it to be a "civil" contempt and contain an appeal bond. Commonwealth ex rel. May v. Walker, *253 Va. 319 (1997). The appeal cannot be bifurcated so as to preclude the necessity of posting*

an appropriate bond for the amount of the child support arrears. Mahoney v. Mahoney, *34 Va. App. 63, 66-67 (2000). When considering the amount of the purge clause:*

- *Limitations on garnishments, such as a person only having to pay 55% of his/her earned periodic income, etc., do not apply to the setting of show cause purge bond amounts.* Frazier v. Commonwealth, *3 Va. App. 84 (1986).*
- *The contemnor must prove he/she is without assets to purge him/herself of contempt; the court will not, as a matter of law, declare that certain individuals or classes of individuals are unable to purge themselves of contempt.* Thompson v. Commonwealth ex rel. Hornes, *2003 Va. App. LEXIS 42 (2003).*

Sentences are imposed a remedial measure to coerce the defendant to do what he/she refused to do and to punish the willful disobedience of a proper order of the court. Thompson v. Commonwealth ex rel. Hornes, *2003 Va. App. LEXIS 42 (2003) citing* Gompers v. Bucks Stove & Range Co., *221 U.S. 418, (1911);* Branch v. Branch, *144 Va. 244 (1926).*

6. e. (i) Judge to the non-custodial parent: The court finds, based on all of the evidence and argument presented, that Mr./Ms. _____ is in contempt of the child support order dated _____. Accordingly, this court sentences Mr./Ms. to _____. You may purge yourself of this finding of contempt by paying a purge bond. The purge bond amount in this case is $_____. *The purge bond may be any amount up to the amount of arrears in the case; the court has wide latitude in setting the amount of the purge bond.* You also have the right to appeal this determination; the appeal would be heard by a different judge in a different court. If you wish to appeal this finding of contempt, there are several bonds that must be posted prior to the circuit court hearing the appeal. Failure to post the appropriate bonds would prevent an appeal and this sentence would stand. The first bond is the appeal bond. The appeal bond is set in the amount of any arrears in this case. This bond is paid to the court to guarantee your appeal; the appeal bond in this case is $_____. *The appeal bond, in the amount of the arrears of a case, if any, is a cash bond payable to the court.* The second bond is an appearance bond. This bond guarantees your appearance at your appeal hearing. The appearance bond in this case is set at $_____. *An appearance bond may be a secured bond payable to the court. If there is a current support order, a performance bond is also required.* Finally, the court will set a performance bond of $_____. *A performance bond is not required in an arrears-only case. It is designed to cover the accumulated current support during the pendency of the appeal. It normally is a cash bond in the amount of current support equivalent to what would accrue from the date of the appeal until when the case would be heard by the circuit court. Only final orders of the court are appealable; if a matter is continued for review by the court, such as a delayed imposition sentence, it can only be appealed after the court has issued its final order. See generally* Mahoney v. Mahoney, *34 Va. App. 63 (2000).*

Chapter 7: Interstate Issues (Code of Virginia §§ 20-88.32 - 20-88.82)

A. Frequently Asked Questions:

1. When dealing with out of state orders, what does the law of the issuing state govern?

The law of the state that issued a child support order governs the nature, extent, amount, and duration of both current support and the payment of arrears under the order. Code of Virginia § 20-88.69.

2. How are out-of-state child support orders handled in court?

With the adoption of the Uniform Interstate Family Support Act (UIFSA), interstate child support issues are much simpler than under previous protocols. The cornerstone of UIFSA is the principle that there is only one child support order in effect at a time. That order remains in effect until it is changed by a court with proper jurisdiction. New courts can, after a registration process, modify or enforce another state's order. If a new court, after having properly assumed jurisdiction in a case, issues a new order, that order will become the effective order and the previous order is superseded and no longer valid.

3. What law governs when having a hearing to determine paternity issues with an out-of-state party?

Per Code of Virginia § 20-88.78(B), interstate proceedings to determine paternity shall use the procedural and substantive law of the Commonwealth.

4. What law governs proceedings used to establish a support order with an out-of-state party?

Per Code of Virginia § 20-88.63(A), a court of the Commonwealth may issue a support order involving a Virginia resident, if no previous order has been issued by any court of competent jurisdiction, at the request of an out-of-state parent or state child support enforcement agency. The case would be decided with the procedural and substantive law of the Commonwealth.

5. What law governs proceedings used to modify an existing out-of-state child support order?

See Code of Virginia §§ 20-88.74-77.2. For a Virginia court to modify an out-of-state child support order, it first must register the order. Code of Virginia § 20-88.74. An out-of-state order will be registered unless the contesting party successfully raises one of the defenses provided at Code of Virginia §§ 20-88.70 - 72.

Once registered for modification, a Virginia court can enforce the out-of-state order as any other child support order. Code of Virginia § 20-88.75. To modify the out-of-state

order, the parties and supported child may not live in the state that issued the child support order, and the moving party for a modification does not reside in Virginia, or if both parties reside in Virginia and the child does not live in the state that issued the order of support. Code of Virginia §§ 20-88.67, 20-88.77:1. The order would be modified using Commonwealth substantive and procedural law except as provided under Code of Virginia § 20-88.69 and § 20-88.76(C).

6. What law governs proceedings used to enforce an out-of-state order?

A Virginia court may enforce an out-of-state order if it has been registered per Code of Virginia §§ 20-88.66 – 67. Defenses to registration are contained at Code of Virginia §§ 20-88.70 – 72. An out-of-state order registered for enforcement only cannot be modified by a Virginia court; if registered for modification and enforcement both can occur. Code of Virginia §§ 20-88.68 and 20-88.75. Once registered, the out-of-state order can be enforced as any other order of the Commonwealth. Code of Virginia § 20-88.68.

7. Can the Commonwealth enforce an order for current support even beyond the age of majority in Virginia?

Yes. See *Robdau v. Div. of Child Support Enforcement*, 35 Va. App. 128 (2001), Code of Virginia § 20-88.69.

8. What defenses can be raised against registration of an out-of-state order?

The party contesting the validity or enforcement of the registered order has to file in court 20 days after the notice of registration. Code of Virginia §§ 20-88.70(B)(2); 20-88.71. The defenses are listed in Code of Virginia §§ 20-88.72. They include:

- The issuing tribunal lacked personal jurisdiction over the contesting party.
- The order was obtained by fraud.
- The order has been vacated, suspended, or modified by a later order.
- There is a defense under the law of this Commonwealth to the remedy sought.
- Full or partial payment has been made.
- The statute of limitations under § 20-88.69 (e.g., that of the issuing state) precludes enforcement of some or all of the arrearages.

B. Suggested Script – Registering the Out-of-State Child Support Order:

7. a. Registration of an order for enforcement:

The procedure to register an order for enforcement, and the defenses that can be raised against it, is contained at Code of Virginia §§ 20-88.66 - 88.73. Note: If an order is registered only for enforcement, the Virginia court may not modify the registered child support order in any way. The court may, as part of enforcement action, require a different amount to be paid against the arrears as what may be specified in the registered order. Once registered, the order is enforced as any other child support order.

7. b. Registration of an order for modification and enforcement:

The procedure to register an order for modification and enforcement is contained at Code of Virginia §§ 20-88.74 - 88.77:2. The defenses that may be raised against the registration are contained in Code of Virginia §§ 20-88.70 – 72. Unlike when an order is registered for enforcement only, when registered for both modification and enforcement the court may do both as if it were any other child support order.

Court and DCSE Survey Regarding Child Support Pro Se Litigants
Greacen Associates, LLC

Role (circle one): Judge Clerk DCSE Counsel DCSE court worker

Court (circle one): Arlington Winchester/Frederick Wise Montgomery
Campbell Chesterfield Hampton Chesapeake

This survey is designed to collect your impressions of pro se litigants in child support cases. Based on your general experience over the past six months, we ask you to rate pro se litigants on a scale of 1 to 5, with 1 being the "lowest" or "least often" and 5 being the "highest" or "most often," on a series of issues. Please circle the response that best fits for each question. On the back of the survey form, please provide us with your views on the major issues facing pro se litigants and the major issues facing the courts in dealing with them.

Preparation	Never				Always
1. In general, did pro se litigants in your experience have the evidence or witnesses they needed at the time they needed them?	1	2	3	4	5
2. In general, did pro se litigants in your experience have their documents – motions, pleadings, etc. – prepared correctly?	1	2	3	4	5
Courtroom Behavior					
3. In general, did pro se litigants in your experience understand court procedural rules?	1	2	3	4	5
4. In general, did pro se litigants in your experience follow court procedural rules?	1	2	3	4	5
5. In general, did pro se litigants in your experience understand the rules of evidence?	1	2	3	4	5
6. In general, did pro se litigants in your experience follow the rules of evidence?	1	2	3	4	5
7. In general, were pro se litigants in your experience able to effectively participate in their court proceedings?	1	2	3	4	5
8. In general, were pro se litigants in your experience able to effectively communicate their position?	1	2	3	4	5
9. In general, did pro se litigants have realistic expectations about the outcome of their case?	1	2	3	4	5
10. In general, did pro se litigants appear to understand the court's rulings?	1	2	3	4	5

Greacen Associates, LLC
Pro Se Litigants in Child Support Cases Survey

Based on your experience, what are the three most serious issues facing pro se litigants in child support cases? :

1. _____
2. _____
3. _____

Based on your experience, what are the three most serious issues facing the courts in dealing with pro se litigants in child support cases? :

1. _____
2. _____
3. _____

After you have finished the survey, please place it in the envelope provided and mail to Greacen Associates.

Thank you for completing the survey!

Confidential Survey
Virginia Child Support Project

THE COURT SYSTEM IS INTERESTED IN YOUR FEEDBACK ON YOUR VISIT TO COURT TODAY. YOUR FEEDBACK WILL HELP US BETTER UNDERSTAND THE COURT'S PROCESSES AND MAKE RECOMMENDATIONS FOR IMPROVEMENT. **THE INFORMATION YOU PROVIDE IS COMPLETELY CONFIDENTIAL AND WILL NOT BE SHARED WITH THE COURT.**

Please rate your experience in court today by noting your agreement or disagreement with the following statements:

	Strongly Agree			Strongly Disagree		Don't Know
	5	4	3	2	1	0
I understood what happened in court today.	O	O	O	O	O	O
I was treated respectfully in court today.	O	O	O	O	O	O
I had an opportunity to present my case in court today	O	O	O	O	O	O
I was treated fairly in court today.	O	O	O	O	O	O
The outcome of today's hearing was favorable to me.	O	O	O	O	O	O
I understand the order entered by the court today.	O	O	O	O	O	O

My case is about getting child support payments

O For me (I am the custodial parent)

O From me (I am the non-custodial parent)

My case is with the Division of Child Support Enforcement (DCSE)

O No

O Yes

- If yes, did DCSE

O Bring this case to court (this is a "full service" case)

O Just handle and keep records of the money (this is a "partial service" case)

Representation (Please fill in one of the bubbles below)

O I am not represented by an attorney in this case

O My attorney was not present in court today, but I am represented

O I was represented by an attorney in this case today

If you are represented, how did you obtain your attorney?

O I hired my own attorney

O The court appointed an attorney to represent me

If you were represented by an attorney today, please rate your agreement with the following statements:

	Strongly Agree				Strongly Disagree	Don't Know
	5	4	3	2	1	0
My attorney was helpful in preparing me for today's hearing.	O	O	O	O	O	O
My attorney was helpful to me during today's court hearing.	O	O	O	O	O	O

If you are not represented by an attorney, which statement BEST describes your reasoning?

O My case is not complicated enough to need a lawyer

O I cannot afford a lawyer

O I do not want to spend the money for a lawyer

O A lawyer would slow down the case too much

O I do not trust lawyers

O I do not know how to find or hire a lawyer

O My case is with the DCSE and I do not need a lawyer

O None of the above

How did you prepare for court today? (check all that apply)

O Reviewed my financial records

O Read about the law that applies to child support

O Brought my financial records to court

O Read the court rules that apply

O Reviewed the court documents

Who helped you prepare for court? (check all that apply)

O Lawyer

O Court staff member

O Friend or family member

O Priest, Pastor, Rabbi, or Imam

O Website, Library, or other reference source

O Asked the clerk's office for help

O I did not prepare for court

How helpful would the following have been to you in preparing for your court hearing today?

	Very Helpful	Helpful	Not Helpful	Don't Know
	3	2	1	0
Reading pamphlets or brochures that explain child support and court procedures	O	O	O	O
Watching a video that explains child support and court procedures	O	O	O	O
Attending a class that explains child support and court procedures	O	O	O	O
Talking with an attorney over the telephone about child support and court procedures	O	O	O	O
Talking with an attorney in person about child support and court procedures	O	O	O	O
Talking with a resource person at the court about child support and court procedures	O	O	O	O

WHEN YOU HAVE COMPLETED THE SURVEY, PLEASE PLACE IT IN THE BOX MARKED "SURVEYS."

7-Question Child Support Survey

Thank you for your feedback on how we conduct child support cases. Please just put a check mark in the box that best represents your answer or fill in the blank as needed. Once you are finished please return it to the Clerk's Office.

1. Are you the: □ Custodial Parent or the □ Non-custodial Parent?

2. Were you represented by an attorney today? □ Yes or □ No

   - **If you were represented by an attorney**, did you hire the attorney?
     □ Yes or □ No

   - How much did your attorney help your position today in court?
     □ A great amount □ Some □ Not sure □ A little □ Not at all

   - **If you were <u>not</u> represented by an attorney**, why did you not have one?

   Check the best response:

   □ My cases is not complicated enough to need a lawyer

   □ I cannot afford a lawyer

   □ I do not want to spend the money for a lawyer

   □ A lawyer would slow down the case too much

   □ I do not trust lawyers

   □ I do not know how to find or hire a lawyer

   □ My case is with the Division of Child Support Enforcement and I do not need a lawyer

   □ Other _____

3. Do you have a case with the Division of Child Support Enforcement (DCSE)
   □ Yes or □ No

   - If yes, is it a □ full-services case or □ just the money flows through DCSE

4. How well did you understand what occurred in court today?
   □ Completely □ Mostly □ Somewhat □ Not very □ Not at all □ Do not know

5. If you represented yourself, did you prepare for court? □ Yes or □ No
   - If yes, how did you prepare?

6. Did you receive assistance from anyone else in preparing for court? □ Yes or □ No
   - If yes, who helped you?

7. What would have helped you to prepare for your court hearing today? (Check all that apply)

□ Reading pamphlets or brochures that explains child support and court procedures

□ Watching a video that explains child support and court procedures

□ Attending a class that explains child support and court procedures

□ Talking with an attorney over the telephone about child support and court procedures

□ Talking with an attorney in person about child support and court procedures

Thank you for completing the survey. Please return it to the Clerk's Office.

Instructions for Administering Litigant Surveys

Preparation

Appoint a courtroom staff member to be responsible for the survey process.

The responsible person must assemble the materials needed before each child support court day. You will need:

- the preprinted surveys, which have been shipped to each court by Greacen Associates
- 81/2" by 11" envelopes, with "Greacen Associates, LLC" printed or handwritten on the front
- clipboards
- pens or pencils with black ink or lead (Do not use "sharpies" or markers that will "bleed" through from the front to the back of the surveys; since both sides of the page are used, we must prevent marks from one side from showing through on the other side of the completed survey document.)
- a box or boxes labeled "Greacen Associates, LLC"

Each pilot court is responsible for obtaining and providing envelopes, clipboards, pens or pencils, and boxes.

Number each questionnaire with a small number in the top right hand corner, starting with the number "1."

Administration

The surveys are to be administered for every child support enforcement case the court hears during the month of January 2005. Provide surveys only for cases in which the judge reaches the merits, including defaults; do not provide surveys for cases in which the court merely reschedules the matter for another date.

Place the box or boxes at the back of the courtroom by the door, on a bench or in some other conspicuous place for collection of the surveys.

At the end of each case, the judge will say to the litigants (whether represented or not):

"We are conducting a confidential survey aimed at improving the services we provide to the public. Participating is purely voluntary. The survey is one page, front and back and should only take a couple of minutes to complete. If you would like to participate, I will give you the survey, a pencil, a clipboard, and an envelope to put the survey in. You can

complete the survey at the back of the courtroom, seal it in the envelope, and put it in the box back there. Are you willing to complete a survey?"

Give all litigants who agree to participate a survey, with a clipboard, pen or pencil, and an envelope. For each litigant who refuses to participate, destroy one survey form. Hand out (or destroy) the questionnaires in numerical order, based on the numbers you have written on them. It is necessary to destroy a form for each non-participating litigant in order to keep an accurate count of the number of persons who were eligible to participate, so that we can calculate the "response rate" for the court and for the project as a whole.

Whenever convenient – at the time of a break, at noon, or at the end of the day, the court staff person who is responsible for the survey process will collect the envelopes from the box, count them, and place them in a safe place for shipping to Greacen Associates, LLC in New Mexico. At the end of each DCSE day, complete the response rate form, noting the number of surveys handed out or destroyed because the litigant would not participate (by looking at the number on the next survey form that was not handed out) and the number of envelopes placed in the box.

The surveys must be administered on each DCSE day during the month of January 2005. Because of the limited number of DCSE days in a month, the project cannot afford to miss a day.

Returning completed surveys

Place the response rate form together with the envelopes containing the completed surveys in a box and ship them by Federal Express to Greacen Associates, LLC, 1024 Highway 96, Regina, New Mexico 87046 (505-289-2164). Do not mail the envelopes individually; that wastes postage and will result in more folded or wrinkled forms, which are hard for us to scan and record. Mark line 7 on the Federal Express form "bill to recipient" and include Fed Ex Account Number 263192915.

Confidentiality

Do not open the envelopes or review the completed surveys. The surveys are confidential, not to be read by anyone other than Greacen Associates, LLC personnel.

Questions

If you have questions about the survey process, please call Drew Swank at the Office of the Executive Secretary -- 804-786-9543.

Docketing Concepts:

1. Dedicated DCSE Docket

To the extent that courts have not already done so, pilot courts should institute a "DCSE day" where DCSE cases only are docketed for either the day or part of the day. As much as possible, other matters, to include non-DCSE child support cases, should not be docketed during this time. DCSE cases should be heard consecutively without interruption for other types of cases absent an emergency. As DCSE is able, through interviewing and focusing of issues, to litigate cases faster with decreased transition times, this dedicated docket approach benefits the court, the litigants, and DCSE. Matters such as visitation and custody should not be addressed on the dedicated DCSE docket day. While some parents would have to return for a custody and visitation hearing on another day, the vast majority would benefit from having only child support issues addressed by the court on a certain day.

Process:

1. Clerks when scheduling cases should set aside entire blocks of time for DCSE cases, and as far as possible, refrain from scheduling non-DCSE cases in these blocks of time.

2. Hour-Certain/Optimum Sized Dockets

The most effective and efficient scheduling system allows the court to hear the greatest number of cases in the smallest amount of time necessary with minimal transition time between cases. Maximizing the number of cases heard by the court, while accommodating the ability of the clerk's office and DCSE staff to process these cases, has significant benefits.

- For *litigants*, this can decrease the time from the filing of the their case to having the case heard by the court and can decrease the amount of time that they have to wait in court on the day their case is scheduled to be heard. The goal is to have litigants and their attorneys wait no longer than one hour on average.
- For *DCSE*, an hour-certain docket provides time for DCSE to interview litigants, thereby ensuring that cases are ready to be heard and can most effectively and efficiently be presented. DCSE can run necessary guidelines and, when possible, resolve cases such as motions to change payee or transfer. When a DCSE interview is not necessary, the DCSE representative can direct those cases to the courtroom, giving the representative time to interview those litigants for whom guidelines need to be run, etc., maximizing the number of cases to be heard each hour. If parties are subpoenaed a short time prior to their hour block (30 minutes or so), DCSE can complete the bulk of the necessary interviews before the scheduled court time.
- An hour-based docket (e.g., cases scheduled for 9:00, 10:00, 11:00, etc.) can provide flexibility over a time certain docket or smaller-block docket (such as 30 minutes), as some cases take less time and others take more time than allotted.

Process:

1. Each court would determine for itself, based on the local conditions, the number of cases to docket per hour. Factors the court should consider in determining how many cases to docket per hour include both the average number of "no shows" the court experiences – cases in which a litigant does not appear and the case cannot be decided by default – and the average time it takes to try a certain type of case in their court.
2. The optimum number of cases a court should schedule per hour, depending on the factors delineated above, should normally range from eight to twelve. It is important to note, however, that the actual number of cases scheduled per hour could be modified based on the type and complexity.
3. After determining the number of cases the court can hear per hour, it is possible to determine the total number per day that can be heard based on the number of hours available. Ideally, dockets should be 50 – 60 cases per DCSE day; if the court has dockets smaller than that amount it could consider eliminating dockets and combining them to have 60 cases per DCSE day. Accomplishing this number of cases, depending on the number of cases per hour, would normally take between five and seven hours of court time.
4. The goal is to have dockets of sufficient size to warrant appearance by the judge, court staff, DCSE, and the Special Counsel. It is preferable to have fewer, larger dockets than more numerous, smaller dockets, as it is more efficient use of in-courtroom time with no adverse effect on preparation time.

3. Docketing the Easiest and Quickest Cases First

In its docket, courts should consider handling what it perceives to be the quickest and easiest cases in the earliest hour-blocks and reserve harder, more complicated cases for the later time periods. Additionally, within hour-blocks themselves, courts should take the quickest cases first and dispose of them before taking more difficult cases. DCSE, based on interviewing the parties and its review of the case, can be invaluable in determining the most effective order cases can be taken. By handling the quickest and easiest cases first, the court will be able to complete the matters and release the greatest number of parties efficiently and on schedule, and have more time to resolve the harder cases. Having knowingly complicated cases that take additional time early in the docket can potentially delay the entire docket and cause other litigants to wait longer for their case to be completed. If a case has to be continued, the continuance will proceed more efficiently by ensuring that parties know exactly what is going to be addressed at the next court hearing, and what they need to bring or prepare.

Process:

1. In each hour block, cases known by the clerk, judge, or DCSE to be simple or needing only a short amount of time to resolve should be handled at the beginning of the hour block. The actual order of cases within the hour block should be flexible so as to allow those cases that can be resolved the quickest to be handled first.

2. When docketing cases, if the clerk is aware that certain cases are going to be more complex, these cases should go in the later hour blocks of time. The court can also consider putting a greater number of easy cases in early hour blocks, and reserve the later hour blocks for fewer, more difficult cases.
3. *Cases in which both parties are represented almost always take longer than non-represented cases; these cases should almost always be scheduled for the last time blocks.*

4. Court Differentiation between Child Support Case Types

Courts need to have the ability to differentiate between DCSE IV-D, non-IV-D, and non-DCSE cases for scheduling purposes. For courts that schedule the different types of cases on different dockets, having the wrong case on the wrong docket can inconvenience the court and the litigants.

Process:

1. Courts can color code files to differentiate between DCSE and non-DCSE cases, and IV-D from non-IV-D cases.
2. DCSE has created a compact disk-based data base that list the names of individuals with DCSE cases for use by court clerks/intake workers. Using the compact disk, the court clerk/intake worker will be able to check the data base and see if the parties have a case with DCSE prior to docketing. The data base would be updated monthly to ensure its accuracy.

5. Meaningful Events Only in the Courtroom

By definition a "meaningful event" is a court hearing that either *moves the case forward* or disposes of it. All hearings docketed should be "meaningful events" in that court action can be taken to move the case forward to the next step or there is an adjudication or disposition. If the case cannot be moved forward or resolved, the matter should not be on the docket. For cases lacking a meaningful event, attempt different ways to handle them other than using court or judge time. Alternatives include the use of advisement letters for appointing attorneys in show causes and administrative review by the court and DCSE to determine a litigant's status instead of having the parties appear in a hearing.

The concept of "meaningful events" is a shared expectation between the court, attorneys, and parties. It is a commitment by the participants that they will be prepared for trial and ready to move the case forward.

Process:

1. The court should create the expectation that a lawyer or self-represented litigant who files a case knows that the hearing will take place on the date and time set without delay or continuances, unless for good cause shown, and that everybody will need to be ready to proceed.

Pre-Court Concepts:

6. Running Child Support Guidelines

For DCSE cases, or cases in which both parties are represented by counsel, an initial set of guidelines should be run prior to the case coming before the judge. As much as possible, courtroom time should not be used to calculate guidelines. In cases in which both parties are represented, having guidelines run prior to court should be a requirement.

Process:

1. Guideline calculations are to be completed prior to the case coming before the judge.
2. If the parties dispute the numbers used in the guideline calculation, multiple sets can be run in various combinations to establish a range that the court can choose from.
3. If guidelines cannot be run prior to the court hearing, collect as much data as possible to allow for a quick calculation after the missing information is obtained. Having partial information from the parties can speed the calculation of the guidelines as compared to getting all of the information through testimony in court.
4. In DCSE cases, sources of data such as the Virginia Employment Commission or federal resources can provide historical data to either complement or to compare with the information the parties provide. This data should be checked for each litigant and compared with what the litigant reports. If what the individual reports in court is significantly less than what the records reflect, the court or DCSE should inquire as to the discrepancy and/or use the historical earning data for the guideline calculation.

7. Complete Genetic Testing and Paternity Order in Advance

Whenever possible, if the court is aware that a party is going to request genetic testing, or if genetic test results are returned prior to a hearing, the court or DCSE should endeavor to have test orders or orders of paternity prepared in advance, ready for entry by the presiding judge at the hearing. Having the orders prepared in advance will save court time for "meaningful events" and minimize the court time for the various participants.

Process:

1. Have requests for genetic testing and paternity orders completed prior to court so that the hearing can be to verify the request and enter the order.
2. Individuals, whether court, DCSE, or private counsel who are completing paternity orders need to use the forms' instructions to ensure that they are properly completed.
3. Orders submitted to the court for entry will need to be checked for accuracy prior to entry.
4. Common errors on paternity orders include:
    - The order lacks the child's date of birth, or the date of birth differs from what is in the Division of Vital Record's database.

- The child's first name is spelled differently than what is contained in the Division of Vital Records' database.
- Date of the order is illegible.
- Order lacks a judge's signature, or the signature is illegible.

8. Capacity of DCSE to Excuse Parties

Many issues can be resolved during DCSE's interviewing the parties. Issues such as motions to transfer, requests to change payee, etc., often require little action of the court other than the entry of an order. If an issue can be resolved during interviewing, DCSE should have the authority to release the parties and draft a simple consent order for entry by the court. Giving DCSE the authority to excuse parties from court after appearing can greatly improve efficiency and decrease the numbers of cases coming before the court which do not need to. In the alternative, DCSE could complete the consent order and quickly bring the matter before the judge for endorsement. The parties can then leave with a copy of the order.

Process:

1. DCSE, upon interviewing the parties, would need to determine which parties and issues are appropriate for a consent order.
2. If a party demonstrates behavior suggesting he or she was under duress or coercion, his or her issues should go before the court.
3. DCSE should be given the authority, and have the equipment necessary, to create a consent order resolving the issue(s) between the parties.
4. The draft order would need to be produced before the hearing, and both parties should endorse the order.
5. After endorsing the consent order, the parties should be able to be released by DCSE.
6. After other cases are completed or during a pause between cases, DCSE should present the consent order to the court for entry.
7. A copy of the order should, after entry and certification, be sent to each party if they have left the courthouse.
8. DCSE should confirm each party's physical address before releasing them.

See next page for a *sample* DCSE consent order and instructions.

Consent Order

Case # _____
DCSE # _____

In the _____ Juvenile and Domestic Relations District Court, we the undersigned parties:

Select:		Initials of Parties
☐	Agree to the Court's entry of the proposed order to change the payee of the child support order as indicated on the Motion to Change the Payee.	_____/_____
☐	Agree to the Court's entry of the proposed order to transfer the child support order to the court listed on the Motion to Transfer.	_____/_____
☐	Wish to withdraw the Motion to Review the child support order filed in this case.	_____/_____

We, the undersigned, further acknowledge that:

1) Neither the Division of Child Support Enforcement (DCSE) employees or the attorney representing DCSE has provided us with legal advice and does not legally represent us in this matter;
2) The fact that this form was provided by DCSE is not an endorsement by that agency of this request;
3) The requested action is made by ourselves of our own free will and for no improper purpose;
4) We have the right to consult with counsel about the entry of this order;
5) The Court, in its discretion, may decline to enter this order and the matter will be rescheduled for trial and we will be summons to appear for a hearing;
6) Our request to have the Court enter this order will result in the court taking the action indicated above; and
7) The Court may enter an appropriate order based on our request and remove the cause from the docket without a hearing.

_____	_____
Petitioner	Respondent
_____	_____
Date	Date

Consent Order Instructions

1. This form is to be used only for three types of cases indicated on it.
2. Do not give this form to one party to go and have the other party sign it. Have both the custodial and non-custodial parent sign the form in your presence.
3. Place the J&DR case number in the first blank at the top right of the form.
4. Place the DCSE case number in the second blank at the top right of the form.
5. Place the name of the court in the next blank.
6. Select the appropriate paragraph. Put a check mark in the left-hand box and have each party initial to the right of the paragraph.
7. Have each party sign and date the form at the bottom.
8. Submit the form to the court.
9. Maintain a copy of the form in the case file.

9. Early Guardian Ad Litem (GAL) Appointments in Disestablishments

In disestablishment actions, § 20-49.10 of the Code of Virginia requires the appointment of a Guardian ad Litem (GAL) to represent the interests of the child in the proceeding and to report to the court as to what is in the best interests of the child. Prior to ordering genetic tests or appointing a GAL, the court should ensure that the exceptions to § 20-49.10 do not apply. If the exceptions do apply, any genetic test results are irrelevant. If the exceptions do not apply, the GAL should be appointed at the same time as genetic tests are ordered, so that the test results and the GAL report, can be considered concurrently by the court at one hearing instead of two.

Process:

1. At the first appearance of a disestablishment action, conduct a hearing as to whether any of the enumerated exceptions to § 20-49.10 apply. If no exceptions apply, order the genetic tests, appoint a GAL, and set the continuance date to consider both the test results and the GAL report.

Courtroom Management Concepts:

10. Leave with an Order

From each proceeding, whether or not the amount of child support changed, the parties should leave with a written order. If the amount, payee, or number of children to whom support is owed changed as the result of a hearing, a new three-part order of support should be generated. If a matter is continued, or a motion denied, jail sentence imposed, etc., the parties should leave with an order which indicates the action taken by the court at the hearing. If the case is to be continued, the court should memorialize the remaining issue(s) and the evidence or preparation required for the next hearing. The next hearing will then be more focused and the litigants more likely to be prepared.

Process:

1. Ensure that either a three-part child support order or some other form of order is completed and given to parties after their hearing. If at all possible, parties should be given an order while they are in the courtroom or as soon after as possible.

11. Keep Cases with the Same Team

As frequently as possible, keep the same case before the same judge/clerk/DCSE Special Counsel team both for continuances and for new matters. The court becomes familiar over time with the litigants and minimal time is spent on reviewing the history of the case. Hearings can proceed more quickly and be more focused on the specific issue at hand.

Process:

1. Assign cases to the same judge/clerk combination as possible; coordinate with DCSE to ensure the same Special or Outside Counsel appears before that judge to which the same cases will be assigned.

12. Minimize Transition and Down Time

As much as conditions allow, the transition time between cases should be minimized. Even a small decrease in transition time between cases can have a significant time-savings over the course of a docket. Unlike juvenile cases, these cases do not require a closed courtroom or exclusion of other parties as confidentiality is not at issue.

Process:

1. Have as many parties whose cases are on the same hour block docket in the courtroom as possible, and not waiting in other rooms or hallways. This accelerates transition times between cases and serves as a learning experience for the observing parties.
2. Use a public address system to call parties into the courtroom or the bailiff's radios to communicate between bailiffs, in lieu of sending a bailiff out of the courtroom to find the next party.
3. Have litigants check-in with a clerk or DCSE to indicate that all parties are present and are ready to proceed. Bypass cases in which the parties are not present or ready.
4. If a party is missing and it is sufficiently past the docket time, that case can be disposed of as per law and local court rules.

13. Verify Addresses at Each Hearing

At each hearing, unless there is an indication of domestic violence or other safety issue, each party should confirm his or her present address for the court and DCSE, as applicable. Parties in child support cases are a more mobile demographic than the population as a whole. Having improper addresses stymies enforcement efforts and wastes judicial, DCSE, and law enforcement resources. If a party appears in court after

having been sent a notice that he or she does not need to appear, it is an indication that the address being used by the court for service is incorrect, and a new address is needed.

Process:

1. At each hearing, have a party verify his or her current physical address.

If security is an issue, the verification of the individual's address can be done ex-parte.

* *Note*: One of the original pilot courts has created its own address verification form. A *sample* of that form is on the following page.

VIRGINIA: IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT OF WINCHESTER CITY/FREDERICK COUNTY

_____ In Re/vs. _____

STATEMENT OF CURRENT ADDRESS

YOUR NAME: _____
(PRINT YOUR NAME)

I hereby certify, under penalty of perjury, that my current address is as follows:

Physical (street) address (including apartment number):

_____

_____

_____

Phone no.: _____ Cell phone no.: _____

Mailing address (if different from physical address):

_____

_____

_____

Employer name and address:

_____

_____

_____

I understand that I have a continuing duty to notify the Court and DCSE (if they are involved) of any changes in my physical or mailing address, or employer.

_____ _____
Date Signature

14. Using Recognizance Forms

Many courts either merely tell litigants when to return to court or give them a card with the date and time. Some courts, however, have had great success using the recognizance form (either DC-329 or DC-330) to require parties – both the custodial and non-custodial parents and any required witnesses – to return to court. The use of the recognizance form has anecdotally been shown to reduce "no shows" for subsequent hearings. By signing the recognizance form, the parties have an actual order requiring their return, and the court has proof of their acknowledgement of the next hearing. An additional advantage is that the court can annotate on the recognizance form what will be considered at the next hearing and what is required of the litigants to bring or prepare. In the alternative, if a case is continued and the court gives the parties an order, the fact that they must return to court can be annotated on the order as well.

Process:

1. Have parties sign a DC-329 or 330 form that indicates the date of their next court appearance.
2. Annotate on the form any additional information that the parties will need for the next court appearance.
3. For continued cases, the DC-329 or 330 forms can serve as the "order" the parties leave with.
4. The court copy should be held in the case file in case the party does not return for the hearing.

15. Automation Support

In each courtroom in which DCSE appears in child support cases, DCSE should have a computer, printer, and Internet connectivity for it to connect to the APECS database. Being able to access the data base from within the courtroom, and not having to go to another room or to telephone the office, will enable DCSE to respond to queries quicker, decrease wasted time, and prevent the need for many continuances.

Process:

1. Coordinate with DCSE regarding the addition or activation of and payment for a telephone line for modem support from counsel table.
2. Ensure there is an electrical outlet near the counsel table for the DCSE computer and printer. Installation of an electrical outlet for these purposes can be coordinated with DCSE.
3. DCSE would need to bring its computer and printer or coordinate with the court for storing the equipment.

This best practice has already been initiated in those pilot courts requesting automation support. Dedicated telephone lines for Internet access are to be installed and maintained at DCSE expense inside a courtroom for each participating pilot court. The line is to be for DCSE use only. DCSE will cover the costs of the line during the pilot project.

16. Capacity of DCSE to Interview Parents before Court

DCSE should have the opportunity to interview the parties prior to their hearing. This can allow for guidelines to be run and issues narrowed, greatly increasing the speed of the hearings.

Process:

1. The court should ensure that DCSE has the opportunity to interview parties prior to their hearing. An appropriate space should be provided to accomplish the interview quickly, with as few distractions as possible.
2. Using an hour-certain docket, and/or having multiple DCSE court workers, would allow for time to interview the parties while maximizing efficiency and minimizing the waiting time of the parties and their attorneys.

Innovations:

17. Genetic Testing at Court

Genetic testing at court on regularly scheduled days reduces the number of genetic testing "no shows" and greatly increases the speed of getting test results to the court. By working with the DCSE district offices participating in the pilot court project it will be possible to coordinate having LabCorp available to do genetic testing at court on select DCSE court days. This practice can reduce by 30 days the delay in the receipt of test results.

Process:

1. The courts, DCSE District Office, and LabCorp would need to coordinate to arrange an optimum date for in-court testing that supports DCSE site testing.
2. If having an additional test day is infeasible due to contract or other restrictions, the court, DCSE, and LabCorp could examine replacing a DCSE site testing day with a court testing day.
3. The court should schedule all initial petitions and disestablishment actions on paternity testing days.
4. Courts could decide if this service should be aimed at testing all of the participants, which would necessitate bringing children to the court, or just the putative non-custodial parents.
5. An alternative would be for DCSE to schedule genetic testing either at its office or a health care provider's office near the court on the day the court has scheduled all initial petitions and disestablishment actions. The parties, if testing were ordered, could proceed from the court to the testing site to be tested that same day, with a resulting decrease in the wait time for the results.

Having testing available at court could eliminate a trip for testing for both parties, or at the very least the non-custodial parent if the child is not present at court. Even if just the non-custodial parent was tested at court, it would decrease the number of "no shows" and increase the speed at which test results are returned.

18. Terminating Court-Issued Income-Withholding Orders

Currently, there is no mechanism for automatically terminating income-withholding orders (Form DC-645) issued by the court. There have been instances where income-withholding orders continue to collect support after it is terminated and no longer owed. In DCSE cases, DCSE monitors whether arrears need to be paid or the child supported by the order is still in school and requires support, etc. For court-ordered income-withholding orders on non-DCSE cases, a proposed Form DC-617(T), Motion and Notice of Proposed Termination of Income Deduction Order for Support, has been created for this project. The form would be filed by the party requesting that the income deduction order terminate. If the responding party contests its entry as indicated on the form, the court would hold a hearing to determine whether the income withholding should terminate or not.

Process:

1. Form DC-617(T), Motion and Notice of Proposed Termination of Income Deduction Order for Support, would be filed by the party requesting that an income-withholding order be terminated.
2. If the responding party wants to contest the termination, as indicated on the motion and notice, the court would set the matter for a hearing and determine whether the income-withholding order should be terminated.
3. The termination of an income-withholding order would have no effect on the underlying order of support.

See next page for *proposed* Form DC-617(T).

MOTION AND NOTICE OF PROPOSED TERMINATION OF INCOME DEDUCTION ORDER FOR SUPPORT

Court Case No.:_____
DCSE ID No.: _____

Commonwealth of Virginia VA. CODE § 20-79.1

_____Juvenile and Domestic Relations District Court

_____
ADDRESS

_____ **v.** _____
PETITIONER RESPONDENT

_____ _____
SOCIAL SECURITY NUMBER ADDRESS

_____
SOCIAL SECURITY NUMBER

MOTION:
1. I request the court to terminate all income deduction orders which were previously ordered in this case and a copy of the order be served on the following:

_____
EMPLOYER'S NAME

_____
EMPLOYER'S ADDRESS

_____ _____
DATE PETITIONER

2. Reason for the proposed termination of the support income deduction order:

☐ Current Child Support has terminated and there are no child support arrearages.

☐ All child support arrearages have been paid.

NOTICE TO THE RESPONDENT/OBLIGEE: Read this entire Notice (pages one and two) carefully. This motion is made pursuant to Virginia Code § 20-79. 1. If you wish to contest this Motion, written notice must be filed in the clerk's office by

_____ for a hearing on _____
FILING DEADLINE HEARING DATE

_____ _____
DATE ☐ CLERK ☐ DEPUTY CLERK

FORM DC-617(T) , Page 1 of 2
07/04 PDF

TO THE RESPONDENT/OBLIGEE:

This notice is to advise you that this Court has been requested for the reason stated above to enter an order terminating all income deduction orders for support.

You have twenty-one (21) days from the date of issuance of this Notice to file in the clerk's office of this court a written notice of contest of such proposed order. If no written notice of contest is filed, the court will enter such an order at the end of the twenty-one (21) day filing period. If you file a written notice of contest, a hearing will be held and a decision made regarding the issuance of the Order and its contents within twenty (20) days from the date that the Court receives your written notice of contest, unless good cause is shown for additional time, but not to exceed forty-five (45) days from your receipt of this notice, and only disputes as to mistakes of fact (that current child support has not terminated or there are child support arrearages) will be heard. If the order is granted, it will be served on the employer listed on the motion.

SERVICE OF PROCESS ON RESPONDENT:

□ Personal service

Being unable to make personal service, a copy was delivered in the following manner:

□ Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. (List name, age of recipient and relation to party named above.)

_____

□ Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

□ Certified mail.

□ Not found.

_____ _____ for _____

DATE SERVING OFFICER

FORM DC-617(T) , Page 2 of 2
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19. Revamp and Use Form DC-603

Many courts are not using the existing form (DC-603) indicating what individuals should bring to court for their child support hearings. Instead, there are a variety of locally-produced forms in use around the Commonwealth. A modified DC-603 has been developed for use by the pilot courts in this project that embodies the best elements of forms developed for this purpose.

Process:

1. Recommend pilot courts adopt the Project's modified DC-603 for local use.

See the next page for a *suggested, modified* DC-603.

COURT QUESTIONNAIRE FOR CHILD SUPPORT CASES

Court Case No.:_____
DCSE ID No.: _____
Commonwealth of Virginia VA. CODE § 20-108.1

- Answer the following questions.
- Bring the completed form and your documents with you when you come to court.
- Give this form to either the Clerk of the J&DR Court or the DCSE representative if you have a case with that agency when you arrive at the courthouse.

Your Name _____ Your Social Security Number _____

How many children are to be supported by this order? _____

Child's Name	Date of Birth	Your Relationship to the Child	Child's Father
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

How many of these children live with you? ____ How many days a year?_____

If the children do not live with you, who do they live with? _____

Has paternity (who the father is) of these children already been decided? _____

Do you pay child support for any other children? _____

Do you have children living with you other than those listed above?_____

How many? _____ What are their ages? _____

Are you the biological or adopted parent of these other children? _____

For the children in this hearing, have you incurred any medical or dental bills that were not covered by insurance and were for more than $250.00 per year? _____

Child Support Litigation Project, Form, 1 Oct. 2004

(CONTINUED ON BACK)

Do you have health insurance for the children in this hearing? _____

How much does it cost you per month for just the children's coverage? $_____

Are there any other special medical, dental, vision, or education expenses for these children you want the judge to know about? If so, list them here:

_____

_____

Is there anything else that you want the judge to know about you or your situation? If so, list it here:

_____

_____

Documents You Need to Bring to Court:

If you are employed - bring a pay stub showing "year to date" pay received for each job you have and your most recent federal income tax return.

If you are unemployed - bring a copy of your most recent federal income tax return.

If you are collecting disability or unemployment benefits - bring a letter or documentation to show the type, source, and amount of the benefits.

If you have a disability that prevents you from working - bring a letter from your doctor or other documentation to show the disability, when it first happened, and what your limitations are.

If you already have a child support or paternity order - bring a copy of any orders you have concerning the paternity of the children in this case and/or the most recent child support order.

If you pay for child care for the children in this hearing – bring a letter from the provider showing what you pay per month for child care.

If you pay child support for other children – bring a copy of the support order(s).

If you have paid over $250.00 in the last year for medical or dental bills not covered by insurance – bring copies of the bills showing the amount paid or due.

If you provide health insurance for the children – bring a copy of the insurance card for the children involved in this case.

One of the pilot courts made further changes to the suggested, modified DC-603 (above), to reflect the fact that oftentimes individuals lack documentation showing their income. The court also created an order, which directs individuals to complete the form.
Both forms follow:

COURT QUESTIONNAIRE FOR CHILD SUPPORT CASE
Commonwealth of Virginia VA. CODE §20-108.1

BRING THE COMPLETED QUESTIONNAIRE WITH YOU TO COURT

Your Name _____ Your Social Security Number _____

Your Current Address

_____

How many children are to be supported by this order? _____

Child's Name	Date Of Birth	Your Relationship to the Child	Child's Father
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

How many of these children live with you? _____ How many days of the year? _____

If the children do not live with you, who do they live with? _____

Has paternity (who the father is) of these children already been decided?_____

Do you pay child support for any other children? _____

Do you have children living with you other than those listed above? _____

How many? _____ What are their ages? _____

Are you the biological or adopted parent of these other children? _____

For the children in this hearing, have you incurred any medical or dental bills that were not covered by insurance and were for more than $250.00 per year? _____

Do you provide health insurance for the children in this hearing? _____

How much does it cost you per month for just the children's coverage? _____

Do you have a "Family Plan" type of health insurance coverage? _____

Are there any other special medical, dental, vision or education expenses for these children you want the judge to know about? If so, list them here:

_____

Where do you work? _____

What is your gross income per month (this is your income per month before any deductions for taxes, social security, etc.)? _____

Do you have any other source of income? _____

DOCUMENTS YOU NEED TO BRING TO COURT:

If you are employed – bring a pay stub showing "year to date" pay received for each job you have and your most recent federal income tax return.

If you are unemployed – bring a copy of your most recent federal income tax return.

If you are collecting disability or unemployment benefits – bring a letter or documentation to show the type, source and amount of the benefits.

If you have a disability that prevents you from working – bring a letter from your doctor or other documentation to show the disability, when it first happened, and what your limitations are.

If you already have a child support or paternity order – bring a copy of any orders you have concerning the paternity of the children in this case and/or the most recent child support order.

If you pay for childcare for the children in this hearing – bring a letter from the provider showing what you pay per month for childcare.

If you pay child support for other children – bring a copy of the support order(s).

If you have paid over $250.00 in the last year for medical or dental bills not covered by insurance – bring copies of the bills showing the amount paid or due.

If you provide health insurance for the children – bring a copy of the insurance card for the children involved in this case.

VIRGINIA: IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT FOR THE CITY OF HAMPTON

TO: THE PERSON NAMED IN THE ATTACHED SUMMONS and/or NOTICE

ORDER

The person named in the attached Summons and/or Notice, which is incorporated herein and made a part hereof, has been summoned to Court regarding establishment or modification of child support. Pursuant to §20-108.2 of the Code of Virginia, 1950, as amended, the Court is required to compute a basic child support obligation. Certain information is required for the Court's use in computing this basic child support obligation.

You are hereby *ORDERED* to complete the attached Court Questionnaire for Child Support Case and bring the documentation requested on the second page of the Questionnaire with you to Court on the date scheduled for hearing.

Failure to bring the completed Questionnaire and documentation set forth above may result in your being held in contempt of Court.

Date entered: _____

_____

Judge

20. Tackle the Employment Dilemma

One of the most constant, troublesome issues in child support is the employment of the parents. Many times, for a variety of reasons, parents will need assistance in seeking and securing employment which can help them support their children. Two proven techniques to assist parents observed on the court visits include the Spotsylvania/Fredericksburg's Barriers Project and the Petersburg's special morning employment docket. The Barriers Project is designed to provide parents with information on, and referral to, employment and community resources to help them overcome the "barriers" to their paying child support. While the actual pilot project utilizes a staff and a host of resources to help parents, a smaller version could be replicated in the pilot courts. Petersburg J&DR also has instituted a mechanism to assist parents in seeking employment, focusing not on providing resources but rather on motivation to have employment. A special, once-a-week morning docket is run where non-custodial parents (and occasionally a custodial parent) are required to appear, pay a pre-determined amount towards their child support, and report their progress for seeking employment. Utilizing the full powers of the court to compel attendance and compliance, this approach is more coercive and punitive than the Barriers Project approach. It is possible to combine the two approaches, mandating appearance at a weekly docket but also providing the parents with information on community resources. A variation of the Petersburg J&DR approach would be to order the non-custodial parent to report weekly to either the local DCSE office, or in those jurisdictions with a work release program, to the office that supervises the work release program to pay a pre-determined amount. If the individual fails to appear, the court is notified and issues a capias.

Process:

1. Gather information and points of contacts for local community resources that can aid parents in employment search. Provide this information to parents as needed.
2. Utilize docket time to set hearings to determine how successful the parents have been in securing employment and utilizing the resources provided.
3. In the alternative, establish a separate, preferably early-morning once-a-week docket (on the same day each week) for individuals to report to court, with an amount of child support specified by the court ($25.00 to $100.00 per week usually depending on the amount of the current and arrears support orders), to inform the court of the success of their employment search. In the alternative, the court could require the individual to report weekly to the local DCSE office or work release program office to pay.
4. The parent continues to return each week until released from the program.
5. If a parent fails to appear, fails to seek employment, or fails to pay the required weekly amount of support, sanction accordingly.

Sample:
Charlottesville/Albemarle Juvenile and Domestic Relations District Court

The following information is to help you find a job or overcome problems that might affect your ability to find a job.

Finding a job

Virginia Employment Commission
400 Preston Avenue
Charlottesville
(434) 984-7630
Hours – Monday – Friday – 8:30 – 4:30.

Adams & Garth Staffing
530 East Westfield Road
Charlottesville
(434) 974-7878

University of Virginia,
University Human Resources
914 Emmet Street
Charlottesville
(434) 924-4598

County of Albemarle
Human Resources
401 McIntire Road
Charlottesville
(434)296-5827

City of Charlottesville
Department of Human Resources
605 East Main Street
Charlottesville
(434) 970-3490

Global Staffing
619 E. High Street
Charlottesville
(434) 975-2439

Getting help

Monticello Area Community Action Agency
1025 Park St.
Charlottesville
(434)295-3171

21. Make Information Available to Self-Represented Litigants in Advance

The court and DCSE district offices will need to ensure that the new child support handbook and DCSE brochures and applications are available in the pilot courts for distribution both when DCSE representatives are present and when they are not. The court should publicize the website (see link below), and make the handbook available to all self-represented litigants who have a child support case and want a copy.

http://www.dss.virginia.gov/family/dcse/court_cases/index.cgi

Process:

1. Material created for self-represented litigants were designed to provide increasingly more detailed and in-depth information.
2. Information will be disseminated in both hard and electronic forms.
3. Electronic dissemination will be by Internet.
4. Hard copy materials should be distributed where the self-represented litigants will seek them – courthouses, legal aid offices, DCSE, DSS, local libraries, magistrate offices, jails, and domestic violence shelters. Sufficient copies will be printed to ensure that pilot courts have enough for their own needs as well as to supply partner locales.

22. Advisement Letter/Hearing

Approximately seventy-five percent of the child support cases being heard in Juvenile and Domestic Relations District Courts are to enforce a child support order. In those jurisdictions in which attorneys are appointed to represent non-custodial parents accused of not paying child support, a significant percentage of the docketed enforcement hearings are only to determine whether the individual desires court-appointed counsel. Depending on the jurisdiction, this "advisement" or "first-call" of the Show Cause would either take place on a special advisement docket or be docketed on the child support day with all of the other child support cases. Many times this is the only action taken at the hearing, and the matter is rescheduled for trial. Often custodial parents are summonsed to this hearing, only to sit and wait to be told when to come to court next. This type of "advisement hearing" often frustrates the parties and could be considered a waste of judicial resources.

While there is no requirement that counsel be appointed on a child support enforcement action, *Autry v. Bryan*, 224 Va. 451 (Va. 1982), it is generally accepted that there are benefits to having defense counsel involved both in representing the legal interests of the delinquent non-custodial parent and in assisting the court to enforce the order of support. In lieu of a hearing, the delinquent non-custodial parent can be advised of his or her right to counsel in a letter accompanying the service documents. The hearing date indicated in the service document would be for trial. The letter would inform the delinquent non-custodial parent of the following options: retain counsel for the trial date; report to the clerk's office to determine if the parent qualify for court-appointed counsel prior to the trial date; or do nothing other than appear for trial if the parent wishes to waive counsel. If the delinquent non-custodial parent does not appear

with counsel, or did not report to the clerk's office to determine if he or she qualified for court-appointed counsel, he or she will be deemed to have waived counsel to represent them in the hearing.

Through the use of an advisement letter, considerable docket time can be freed to hear other cases, shortening for the courts the "filing to hearing" time line. The opportunity costs for the participants and the court would be much lower; the custodial parent only has to appear for trial; court and DCSE resources are used only for trial; and delinquent non-custodial parents are able to be advised of their options without coming to court. Even the ability to come to the clerk's office during normal business hours, instead of a mandated time and date to report to court for the advisement, would allow the delinquent non-custodial parent flexibility in securing transportation and arranging time off from work if they opted to seek court-appointed counsel. Likewise, the clerk's office and DCSE will only have to prepare files for the actual trial instead of two hearings – an advisement hearing and a trial.

While it would require some personal responsibility on the part of the delinquent non-custodial parent to follow through with the instructions of the letter, the cost benefits for all parties and the court are compelling. Absent a delinquent non-custodial parent taking the personal responsibility to request court-appointed counsel, it is likely that such appointments would decrease, which in itself provides a cost-savings for the Commonwealth. Failure by the delinquent non-custodial parent to assert his or her desire for counsel should not be construed as a denial of the right to counsel, which technically in civil support matters does not even exist. *See generally* Eric J. R. Nichols, *Preserving* Pro Se *Representation in an Age of Rule 11 Sanctions*, 67 TEX. L. REV. 351, 379-80 (1988); Candice K. Lee, *Access Denied: Limitations on Pro Se Litigants' Access to the Courts in the Eighth Circuit*, 36 U.C. DAVIS L. REV. 1261, 1280-81 (2003); Deborah L. Rhode, *The Social Responsibility of Lawyers: Equal Justice Under Law: Connecting Principle to Practice*, 12 WASH. U. J.L. & POL'Y 47, 49-50 (2003). The ultimate goals of this approach are to lower opportunity costs for the parties, the court and DCSE, to reduce the number of hearings that lack "meaningful events," and reduce the filing to hearing time line for all cases. The effect of eliminating advisement hearings on the docket can be objectively evaluated in the pilot courts by its impact on the filing to hearing time line and the numbers of cases that are able to be docketed per child support day, making the entire process for all participants more efficient.

If the court is hesitant to completely eliminate an in-person advisement, it could consider adopting a model whereby a special, mass docket for advisements is run. Advisements can be made by the court clerk, eliminating any "judge" time from being used solely to determine whether the individual wants counsel. No custodial parents need be summonsed to this hearing. All non-custodial parents are informed in mass of their right to counsel, and those electing to seek court-appointed counsel are handled at the hearing by court staff. The custodial parents would only be summonsed for the actual trial date.

Process:

1. The advisement letter would be attached to service documents.
2. Trial dates would have to be set sufficiently in advance to ensure that, on average, the individual would have a minimum of ten business days prior to the hearing from the date of service. Each jurisdiction would have to determine how far in advance trials would have to be set depending on their average service time line.
3. There may be instances where individuals would come to court who are either illiterate or functionally illiterate in the English language. For these individuals, and others in the sound discretion of the court, the court could advise them of their right to counsel and continue the matter as is traditionally done in that court.
4. Requests for continuances by retained counsel would be handled per the local court rules.
5. Appointed defense counsel, either appointed for all cases that day or from a list for individual cases, should only request a continuance as absolutely necessary. Failure of the delinquent non-custodial parent to timely meet or coordinate with defense counsel prior to trial, absent exceptional circumstances, should not be the basis for a continuance.
6. Failure of retained counsel to request a continuance or to appear for trial should be strictly dealt with by the court. If the delinquent non-custodial parent can demonstrate that he or she has successfully retained counsel, the matter should normally be continued and the counsel required to show cause why he or she failed to appear. If the delinquent non-custodial parent cannot demonstrate that he or she has successfully retained counsel, he or she should be deemed to have waived counsel, and the matter should proceed to trial.
7. For any individual who wishes to waive counsel, fails to seek court-appointed counsel, or fails to successfully retain counsel, he or she should be deemed to have knowingly and voluntarily waived counsel. The waiver of counsel form should be signed and maintained in the court file.
8. Court clerks should be knowledgeable about the procedure for determining whether an individual qualifies for court-appointed counsel. If the individual qualifies for court-appointed counsel, the clerk should provide him or her with the name, telephone number, and directions to the court-appointed attorney. It is the delinquent non-custodial parent's obligation to contact and meet with the court-appointed counsel.
9. Attorneys who are to serve as court-appointed counsel should be apprised of any new procedures instituted by the court.
10. If a case has to be continued, the custodial parent should immediately be notified and given the new trial date and not be required to appear on the originally scheduled date.
11. Failure to appear in court by properly served delinquent non-custodial parents should be dealt with as provided by law.

See the next page for a *sample* advisement letter. On the page after that is a version created by one of the pilot courts.

_____ Juvenile and Domestic Relations District Court *(Sample)*

There has been an allegation that you have failed to pay your child support as required by a child support order. You **must** report to court on the date and time indicated on the summons. If the court finds you in contempt for failing to pay child support you can be jailed for up to twelve months. Because you could go to jail, you can have a lawyer represent you at your hearing. You have three options for a lawyer. You may:

(1) Not use a lawyer and represent yourself;

(2) Hire your own lawyer to represent you; or

(3) Ask the court to appoint an attorney to represent you.

If you want to represent yourself, you will need to appear for your hearing on the date the summons indicates. At court you will have to sign a waiver of counsel form. If you do not come to court for your hearing you may be fined or jailed.

If you hire your own lawyer, make sure he or she knows of your hearing date. If your lawyer is unavailable for the hearing, **he or she** will need to contact the Clerk's Office to ask for a continuance. Your lawyer will tell you if the court agrees to a continuance and the new date. If the court does not change the hearing date, the hearing will still take place as scheduled with or without your lawyer. If you do not come to court for your hearing, you may be fined or jailed.

If you want a court-appointed lawyer, you must come to the Clerk's Office at least ten (10) days before your hearing date between the hours of _____ and _____. The Clerk's Office will determine if you qualify for a court-appointed lawyer based on your income. You should bring a copy of your most recent paycheck stub with you.

- If you qualify for a court-appointed lawyer, the Clerk's Office will give you the name and address of your lawyer. Your lawyer will be at court for your hearing. You should meet with your lawyer prior to your hearing. If you do not meet with your lawyer before your hearing, the hearing will still take place as scheduled. **Note: You may have to pay back the Commonwealth of Virginia for the cost of your lawyer.**
- If you do not qualify for a court-appointed lawyer, you may either hire your own lawyer or represent yourself at your hearing. The hearing will not be continued if you do not qualify for a court-appointed lawyer.

If you do not hire a lawyer or come to the Clerk's Office about a court-appointed lawyer, you will have to represent yourself at your hearing. If you do not come to court for your hearing, you may be fined or jailed.

WINCHESTER/FREDERICK JUVENILE & DOMESTIC RELATIONS DISTRICT COURT: RIGHT TO LAWYER: SUPPORT CONTEMPT, 12/04

IMPORTANT NOTICE: RIGHT TO A LAWYER

In Re/vs.

_____ _____

There has been an allegation that you have failed to pay your child support as required by a child support order. You must report to court on the date and time indicated on the summons. **This is your trial date; bring any evidence you want the Court to consider.** If the Court finds you in contempt for failing to pay child support you can be jailed for up to twelve months. Because you could go to jail, you can have a lawyer represent you at your hearing. You have three options for a lawyer. You may:

(1) Not use a lawyer and represent yourself;

(2) Hire your own lawyer to represent you; or

(3) Ask the Court to appoint an attorney to represent you.

If you want to represent yourself, you will need to appear for your hearing on the date the Show Cause Summons indicates. At Court, you will have to sign a waiver of counsel form. If you do not come to court for your hearing, you may be fined or jailed.

IF YOU WANT A LAWYER, YOU NEED TO ACT NOW

If you hire your own lawyer, make sure he or she knows of your hearing date. If your lawyer is unavailable for the hearing, **he or she** will need to contact the Clerk's Office to ask for a continuance. Your lawyer will tell you if there is any change in the hearing date. Unless your lawyer or the Court tells you differently, you need to appear at the date and time on your Summons for a trial.

If you feel you cannot afford to pay for a lawyer and you want a court-appointed lawyer, you must come to the Clerk's Office **at least ten (10) days** before your hearing date between the hours of **8:00 a.m. and 4:00 p.m.** The Clerk's Office will determine if you qualify for a court-appointed lawyer based on your income. You should bring a copy of your most recent paycheck stub with you.

If you qualify for a court-appointed lawyer, the Clerk's Office will give you the name and phone number of your lawyer. It is up to you to call your lawyer and arrange an appointment before trial. Do not wait for him or her to contact you. **Note: if you are given a court-appointed lawyer, and you are found guilty of contempt, you will be charged up to $112 as court costs in a case to reimburse the state for the cost of your lawyer.**

If you do not qualify for a court-appointed lawyer, you may either hire your own lawyer or represent yourself at your hearing. The hearing will not be continued if you do not qualify for a court-appointed lawyer, or if you do not apply for a court-appointed lawyer or hire a lawyer before your hearing.

If you do not appear for your hearing, you can be arrested, and fined or jailed.

CC: RESPONDENT

23. Administrative Review Hearings

Approximately 75% of all child support hearings are for enforcement actions. Of those hearings, many are continued to review the employment or payment history of the delinquent non-custodial parent or to determine his or her "status" - incarceration status, social security status, etc. Many times these hearings only take a matter of minutes and require no action on the part of the parties.

In these review or status hearings, the custodial parent rarely plays any role. Exempting the custodial parent from attending these hearings would lower this parent's opportunity costs for seeking to have the order enforced. Likewise, many times even the non-custodial parent plays no role in the hearing other than being present. Not requiring the non-custodial parent's presence could also reduce this parent's opportunity costs for complying with the order.

The judge and the DCSE Special Counsel/court worker can administratively review ex parte certain types of cases, either in person or telephonically. They can quickly determine whether the individual is in compliance with the court order or determine their "status." These administrative review hearings can be done during non-docket time, reserving court time for "meaningful events." The review hearing can be scheduled prior to the date the party is required to return to court. If the court determines that the matter does not require a hearing or should be continued further, the party(ies) can be notified accordingly prior to the scheduled hearing. This practice will reduce both the parties' and the court's opportunity costs. This type of administrative review could quickly dispatch a large number of cases, freeing needed docket time for "meaningful events."

The best types of cases to be administratively reviewed are those to determine the disability status/ability to work of a parent following an illness/injury or a parent's incarceration status. Reviewing enforcement cases administratively is not recommended because it can be counterproductive in the long run. If a non-custodial parent is failing to comply with an order of the court, then he/she should be found in contempt and sentenced accordingly. If the court decides to suspend a sentence, and the non-custodial parent continues to fail to pay, DCSE can file a new Rule to Show Cause. Likewise, repeatedly continuing cases to allow for a party to be located can be inefficient. While a case could be put on administrative review to allow for locating a party, it would be better to remove it entirely from the docket and then bring the matter back when the individual is located.

Process:

1. If a case is to be continued for review or to determine the status of a party, the court would select an administrative review date and then schedule the hearing date for the parties subsequent to it. The amount of time between the administrative review date and the hearing date could vary based on a number of factors. It must be sufficiently long enough, however, to allow for the parties to receive written notification that they do not need to appear for the

hearing. A period of one to two weeks would normally be sufficient. Cases needing an administrative review can be scheduled in the Court Management System. Assigning a unique docket time for the cases to be reviewed can differentiate them from the normally docketed cases; Bedford J&DR uses the time of "8:00 p.m." to designate its administrative review cases. Parties would sign a recognizance form for their acknowledgment of the continuation date and their requirement of having to return to court.

2. The presiding judge, clerk, and DCSE Special Counsel and court worker would need to agree on a time to review the cases. There is no requirement that the different participants be co-located. A conference call can be used to discuss the cases being reviewed.
3. Administrative review occurs for cases that have already had a court hearing and have been continued. In effect, it is an ex-parte determination as to whether or not the subsequent court appearance should take place or not. If the court determines based on the administrative review that either the matter should be removed from the docket (with the show cause either dismissed or a sentence suspended, etc.) or continued for further review, an appropriate order indicating the action of the court would be sent to both parties informing them of the decision of the court and what steps, if any, they need to take. If the decision is to hold the hearing as previously scheduled, no order need be sent, and the parties should appear as they had been recognized to do so.
4. If a party appears, after having been sent an order indicating that the matter is concluded and that they do not have to appear, it would be a good indication that the address the court is using is incorrect. The party should be required to provide the correct address to the court for future reference to assist with future enforcement actions.
5. Status hearings would be handled in the same manner as administrative reviews. DCSE would provide the results of its inquiries into the status of the party or, if the court directed the party or his or her attorney to submit information to the court, (e.g., a letter regarding the status of a social security claim). This information could be reviewed and the court could determine whether to remove the matter from the docket, continue it, or hold the hearing as originally scheduled.
6. If a matter is concluded and removed from the docket at the administrative review, and a party disagrees with that determination, the party would be free to either file a motion to rehear the matter or file an appeal. Decisions to continue the matter for further review are within the sound discretion of the court and not normally reviewable.

24. <u>The Alternative Dispute Resolution (ADR) Option</u>

Local J&DR courts have demonstrated that it is possible for up to 25% of initial petitions and modifications to be diverted to mediation for resolution. Mediation is a viable option for non-public assistance, non-domestic violence cases. A high percentage of referred cases reach a consent order. Mediations and their referral are at no costs to the courts. Non-DCSE and Non-IVD DCSE cases could all be potentially mediated. If a

case is a DCSE IV-D case, the mediation coordinator should contact DCSE to determine if the case would be appropriate for mediation.

Process:

1. If the juvenile court does not have a mediation coordinator, one should be contracted through the Dispute Resolution Services Office at the Office of the Executive Secretary. Contact Geetha Ravindra at (804) 371-6064.
2. The mediation coordinator and/or clerk screens cases to determine the ones likely to succeed in mediation.
3. The mediation coordinator refers the selected cases to the appropriate mediator.
4. The parties are contacted to see if they are amenable to mediation. If so, the mediation is scheduled and conducted.
5. If the matter is resolved, a consent order is created for entry and distribution by the court. If the matter is not resolved, it is docketed for litigation.
6. The mediator coordinator ensures that cases are mediated expeditiously and consent orders are submitted in a timely fashion.
7. Clerks might wish to consider docketing mediated cases that were not resolved ahead of other cases to compensate for the time spent attempting to mediate the case.

- Mediation Resources and Points of Contact for the Pilot Courts.

Mediation services are paid for by Commonwealth "Code of Virginia § 20-124.4" funds and at no costs to the courts. If a mediation coordinator does not exist, one can be hired to provide coordination between the courts and mediators. Coordinators work to identify the appropriate cases for mediation and monitor referrals. For more information, contact Geetha Ravindra, Director, Dispute Resolution Services, (804) 786-4760.

Court	P.O.C.	Telephone Number
Campbell	Carolyn Pritchard	(434) 929-8227
Chesapeake	Elizabeth Lindsay	(757) 382-8133
Chesterfield	Commonwealth Mediation Group	(804) 254-2664
Hampton	Larry Martin	(757) 838-2966
Montgomery	T'aiya Shiner	(540) 552-1200
Winchester/Frederick	Skip Mertz	(540) 662-9515
Wise	Ron Avery	(276) 628-9217

25. Creating Scripts and Formats

Standardization of how the court handles and explains child support matters can lead to greater efficiency and consistency in the application of the law. Standardization also increases predictability and user-friendliness for litigants. Scripts and formats can be extremely beneficial to judges who might not preside over child support cases on a consistent basis (circuit and substitute judges).

Process:

1. Utilize project designed scripts and formats for child support cases as needed.
2. Modify scripts and formats as needed to meet local conditions.

See the Judges' Bench Book, with appropriate scripts, for the seven common types of child support cases or processes addressed in the eight pilot courts in this demonstration. The Bench Book provides the most frequently asked questions and answers, by case type or process -- Determination of Paternity, Determination of Maternity, Disestablishment of Paternity, Establishment of Support, Modification of Support, Enforcement/Rule to Show Cause, and Interstate Issues.

The Judges Bench Book is incorporated as Appendix F and is 36 pages in length.

Additional "Best Practices" Developed During the Implementation Phase

26. Docketing Only Cases with Service

Many times cases are on the docket in which there is no service on one or both parties. These cases, which cannot be heard due to the lack of service, take up precious docket space and can adversely affect both the court and the other parties present in court or parties waiting for their case to be docketed. Besides working with DCSE or the Sheriff's Department to improve service of process, the court can minimize the negative impact of the lack of service by docketing only those cases in which there was successful service. One of the pilot courts began this approach and has tremendous success with it. While even with service in every case on the docket does not guarantee that every litigant will appear – some will still not come to court even if they have been served – the "no show" rate is below 10%, which greatly benefits the court and the litigants involved. Below is the process the court uses to ensure that only cases that have service are docketed. On the following pages are two forms the court uses.

Process:

1. For SHOW CAUSES for failure to pay child support:
   a. Show causes are initially set for an advisement hearing, and only the respondent is summoned to appear. When the show cause is returned by law enforcement as "NOT FOUND," it is given to the issuing clerk or deputy clerk.
   b. The clerk continues the case in CMS from the current advisement date to an administrative review date 90 days from the date the show cause was returned (the administrative reviews are set on CMS for 6 p.m.).
   c. A "REQUEST FOR NEW OR BETTER ADDRESS" form is sent to DCSE with a copy of the service attached.
   d. If DCSE responds with a new address within 90 days:
      (1) The show cause is re-issued,
      (2) If service is not achieved again, then the show cause is presented to the Judge for dismissal
   e. If DCSE does not respond with a new address within 90 days, then the show cause is presented to the judge for dismissal.
   f. A copy of the dismissal order is sent to DCSE.

2. For MOTIONS TO AMEND SUPPORT:
   a. Motions to amend are set for a hearing, and the petitioner, respondent, and DCSE are summonsed to appear. When the summons for the respondent is returned by law enforcement as "NOT FOUND", it is given to the issuing clerk or deputy clerk.
   b. The clerk continues the case in CMS from the current advisement date to an administrative review date 90 days form the date of the show cause was returned (the administrative reviews are set on CMS for 6 p.m.).
   c. A "REQUEST FOR NEW OR BETTER ADDRESS" form is sent to DCSE with a copy of the service attached.
   d. The clerk's office sends a form letter from DCSE to the other party notifying

them that the matter has been removed from the docket.

e. If DCSE responds with a new address within 90 days:
   (1) The show cause is re-issued,
   (2) If service is not achieved again, then the show cause is presented to the Judge for dismissal
f. If DCSE does not respond with a new address within 90 days, then the show cause is presented to the judge for dismissal.
g. A copy of the dismissal order is sent to DCSE.

3. For the dismissal order, the clerk's office uses a pre-printed stamp that states:

DISMISSED WITHOUT PREJUDICE – UNABLE TO LOCATE RESPONDENT

_____

DATE JUDGE

The forms for requesting a new address and informing the petitioner that the matter has been removed from the docket are on the following pages.

REQUEST FOR NEW OR BETTER ADDRESS

(This part completed by the Clerk's Office)

Court: _____

Court Date: _____

Party Name: _____

DCSE ID# _____

Date Sent to DCSE: _____

(This part completed by DCSE Locate Specialist)

Date Received: _____

Date of Search: _____

New Address: _____

_____

No New Address: _____

Date Sent to Court: _____

(This part completed by the Clerk's Office)

Date Received: _____

Date New Summons Issued: _____

Results of New Summons: ( ) Not found because of:

( ) Bad address or ( ) Incomplete address

( ) Served

Case Continued to: _____ for new or better address.

Case Continued to: _____ for service at new or better address.

TO: DATE:

RE: COURT HEARING SCHEDULED FOR _____ IN _____ COURT.

Dear: _____

Please note that at this time, due to a lack of service on the other party to your case, there will not be a hearing held on the above date. Our office is attempting to obtain a new or better address for the other party and will provide that information to the court once we do.

You will not be required to appear for the court date listed above; the court will send you a new summons once the other party has been served. Should you have any questions, or if you have information to provide about the other party's address or whereabouts, you may contact our office at _____. You may also contact the court at _____.

Should you move or change your address before receiving your new summons, please notify DCSE and the court of your new contact information.

Thank you,

_____
DCSE Court Specialist

- ADDRESS NOTIFICATION FORM

  [See above, under "13. Verify Addresses at Each Hearing."]

- ALTERNATIVE DISPUTE RESOLUTION RE-WRITE

  [See above, under "24. The Alternative Dispute Resolution (ADR) Option."]

- ATTORNEY NOTIFICATION LETTER

  [See copy above, under "22. Advisement Letter/Hearing."]

- CHILD SUPPORT QUESTIONNAIRE

  [See above, under "19. Revamp and Use Form DC-603."]

- ORDER OF SUPPORT NOTICE

  [See suggested Notices above, under "19. Revamp and Use Form DC-603."]

- ORDER TO COMPLETE CHILD SUPPORT QUESTIONNAIRE

  [Again, see above under "19. Revamp and Use Form DC-603."]

- PAYMENT FORM

  [See form two pages below.]

NOTICE

_____ In Re/vs.
_____

YOU HAVE BEEN ORDERED TO PAY CHILD SUPPORT. FAILURE TO OBEY THIS ORDER CAN RESULT IN SERIOUS PENALTIES, INCLUDING UP TO 12 MONTHS IN JAIL.

READ THIS ORDER CAREFULLY.
KEEP THIS ORDER - YOU ARE EXPECTED TO KNOW WHAT IT SAYS

THIS ORDER TELLS YOU:

- ♦ HOW MUCH TO PAY
- ♦ WHEN TO PAY
- ♦ WHERE TO SEND YOUR PAYMENT

- YOU MUST PAY YOUR SUPPORT AS THE ORDER REQUIRES TO GET CREDIT FOR THE PAYMENT.
- GIFTS OR MONEY GIVEN TO YOUR CHILD IS NOT CHILD SUPPORT.
- IF A PAYROLL DEDUCTION IS ORDERED, IT IS STILL YOUR RESPONSIBILITY TO SEE THAT PAYMENT IS MADE. IF ALL SUPPORT IS NOT DEDUCTED FROM YOUR PAY, YOU MUST STILL MAKE THE FULL PAYMENT.
- KEEP THE COURT, THE PERSON RECEIVING THE SUPPORT, AND DCSE (IF THE LATTER IS INVOLVED) ADVISED OF YOUR CURRENT ADDRESS AND EMPLOYMENT, AT ALL TIMES.
- IF YOU LOSE YOUR ORDER, YOU CAN GET A COPY FROM THE COURT. "I DIDN'T KNOW WHAT MY ORDER SAID" IS NO EXCUSE.
- ONLY THE COURT, OR (IN SOME CASES) DCSE, CAN CHANGE A SUPPORT ORDER. IF YOU WANT THE ORDER CHANGED, YOU NEED TO MAKE A PROPER REQUEST TO CHANGE IT.

Notice and Order Received: _____ ____/____/____

Created 1/2005

PAYMENT FORM

Defendant: _____

Custodial Parent:_____

A. ___**Current Support** ___ Court ___Administrative child support **order** to pay $_____ per month or per _____, entered on _____/____/_____

OR

__**Arrearage Only Case**. Ordered to pay $_____ per month or per _____.

B. **Arrearages:** $_____, principal child support, and $_____ interest and/or fees, as of ____/____/____, for total of $_____.

C. **Last 3 payments:**

$_____ posted on ____/_____/____

$_____ posted on ____/_____/____

$_____ posted on ____/_____/____

Responses to Open-Ended Questions on Court Participant Surveys

Based on your experience, what are the three most serious issues facing pro se litigants in child support cases?

Clerks

- not having the appropriate documents
- understanding criteria used to determine amount of child support ordered
- failure to understand court procedure
- not understanding the system and how it works
- service to other party -- it is often difficult for the custodial parent to get proper service on the non-custodial parent
- understanding and preparing their cases (having appropriate documentation, witnesses, etc)
- many don't have pay stubs or addresses of employers with them
- don't bring needed materials
- the fact that they are pro se and the Division has counsel
- understanding the outcome of the case
- not realizing the consequences of paying support
- respondents participating in cases pro se when DCSE has attorney representation
- not communicating their own concerns accurately
- understanding the income deduction process -- respondents often fail to understand that they should pay Treasurer until the amount is deducted from their payroll
- many respondents in DCSE cases don't understand that they are to pay the treasurer of VA. They pay the petitioner directly

- do not understand exactly what to file. Always seeking legal advice in clerk's office
- their lack of understanding of the seriousness of not paying their support
- filing the correct motions/using correct forms
- not having the knowledge of what questions to ask to get their evidence across
- understanding that child support and custody/visitation are separate issues
- failure to understand rules of evidence and what is necessary for court evidence/witnesses
- not bringing necessary information to court for guidelines to be figured accurately
- receiving payments owed to them by the non-custodial parent. The process of returning to court on a show cause is very frustrating to the custodial parent
- understanding court's ruling
- roughly 1/3 do not understand the guidelines
- don't properly fill out motions
- their lack of knowledge and understanding of the law
- being prepared for the hearing

DCSE Counsel

- following the court procedures
- they don't realize that they are still responsible for the full amount of the child support obligation even though the employer is withholding money from their earnings. They don't understand that they must send the rest themselves.
- understanding what evidence is relevant
- lack of understanding of court procedures
- not understanding the law
- understanding the procedure
- they don't understand the proration issue and how the money that is remitted is distributed to all their cases when they have more than one case
- understanding what evidence is admissible

- inadequate preparation, such as failure to bring evidence or subpoena witnesses
- unrealistic expectations
- having evidence or knowledge of the costs and availability of health insurance for them and their children
- don't know how to prove their cases (rules of evidence) Ex: "He makes money on the side!" "How do you know?" "His mother told me." "I she here? Did you summons her?
- they don't always realize they can go to jail for not paying their child support obligations as ordered.
- understanding the role DSCE plays as an objective third party and the consequences of opening and closing a case with DSCE
- inadequate security in waiting area
- service of process problems

DCSE Court Workers

- having evidence or knowledge of their income for court hearings
- don't understand need to file motion to amend if their circumstances have changed. Think their support can be modified retroactively to when change event happened as opposed to when they filed pleadings
- not knowing what info and/or documents they need to provide
- lack of preparation in advance of court hearings -- little or no evidence brought to court on the day of hearing -- party will state they did not know they would need to bring a particular item
- pro se litigants rarely are able to prove what they claim, usually because they lack admissible evidence
- guidelines -- parties express concerns about using gross income instead of net; current expenses for present family should be considered (ex. day care)
- they frequently confuse custody with child support -- expect not to pay if they don't see child
- the non-custodial parent can't be located; neither DSCE nor the court can properly serve the other party
- not enough education to get a decent paying job

- unrealistic expectations regarding what the court can and cannot do, e.g.
- expecting a support obligation to decrease upon request when the party has been fired from a job for not showing up for work
- they fail to understand the lasting consequences of the proceedings they are involved in
- respondent complains about paying child support and not allowed to see child and/or know where child resides. Explained child support different from child visitation
- ignorance of the law
- the non-custodial parent fails to pay the support ordered by the court
- families draw ADC/TANF and whatever benefits for years, not realizing that has to be paid, then DCSE files for back debt - by then he is so far behind - no way of ever paying back
- knowing when it is appropriate to seek a modification of the child support orders
- poor record keeping -- they can't prove what's been paid or what is owed.
- not knowing/understanding sequence of events in hearing -- think they can jump in with statements at any time -- causes lots of wasted time when judges have to continually warn them not to interrupt
- they are often unable to separate support issues from custody, visitation, etc issues
- many questions before and after hearings. Never enough time to answer all for both parties -- several leave frustrated
- inability to accept guideline calculations including liability of parents only for support -- no step parent payment or step children needs
- the non-custodial parent is under employed on purpose, to have their child support obligation lowered
- have filed for Social Security benefits and case continued for years!

APPENDIX I: ISSUES FACING SELF-REPRESENTED LITIGANTS AND FACING THE COURTS DEALING WITH SELF-REPRESENTED LITIGANTS (AS REPORTED BY COURT PARTICIPANTS)

Judges

- lack of understanding of the court's process and its impact on them -- the significance of a court order for support particularly
- Inadequate recording keeping
- unrealistic expectations re amount of support
- they are laymen in an experts' world
- lack of knowledge re law, court proceedings, rules (especially if one party has a lawyer)
- ensuring accurate records of support owed and support paid
- understanding other options
- lack of preparation - having information, documents necessary to compute child support guidelines despite advance notice to them of what is needed
- not reading court orders
- understanding the need for court approval before modifying or disregarding the court's order
- having documentation or other evidence/witnesses to defend why they are not capable of working/paying support
- getting help they need to prepare case
- lack of understanding of evidentiary issues such as burden of proof and standards for support awards and modifications
- disobeying court orders
- service of process - locating non-custodial parents to have them appear before the court
- understanding the ruling

Based on your experience, what are the three most serious issues facing the <u>courts</u> in dealing with pro se litigants in child support cases?

Clerks

- not being able to give legal advice
- not being prepared for court
- increase in # of cases filed by DCSE and pro se cases
- explaining the process without giving legal advice

- service on respondent - often the court does not have an accurate address on the respondent
- explaining how the court system works
- they don't comprehend the orders -- some can't read
- motions not properly filled out
- working with frustrated citizens who feel the court should give them legal advise or act as their counsel
- explaining court procedures and following them in a non-support case
- not being able to interpret court orders
- litigant asking for legal advice
- lack of adequate staff
- lack of information from records
- complete and accurate employment information provided on wage assignment sheets for Income Deduction Orders
- providing them with "procedural" information without giving them legal advice
- they don't listen to the judge or DCSE representative
- not bringing materials to court (case continued for months; case dismissed and refiled
- time wasted because they are not prepared with evidence they need to provide
- trying the case without representing the defendant
- litigant leaving court feeling he/she not treated fairly
- low communication between agencies involved in child support cases
- appealed cases. If the income deduction order has been sent in and circuit court changes the support amount, they are failing to send a corrected or modified income deduction order.
- many of the men and women are angry with each other and just want to hurt each other any way they can
- DCSE cases scheduled too far out on the docket. Not enough time in the day to do all their cases.
- the growing number of non-competent people we are faced with

DCSE Counsel

- walking the line between helping the pro se litigant file the correct pleadings and providing legal advice
- trying to help pro se litigant even when he/she has filed the wrong pleadings
- because they don't understand the judicial process, pro se litigants often have a belligerent attitude which, most times, creates more problems for the court
- helping the parties file the proper pleadings and limiting the scope of proceedings to those pleadings, and making sure parties understand
- too much time between filing and disposition
- pro se litigants can have unrealistic expectations
- most pro se litigants don't understand what happens in court. Due to volume of cases and the brief time given to each case, the courts don't always have the time to insure that the pro se litigants understand what has happened during the hearing
- making certain that each party knows what is expected of them after the hearing is concluded
- inadequate security
- explaining the court and legal processes
- making sure the parties know what they earn, pay for child's health insurance and child care
- lost time - most child support cases with counsel on both sides will settle. Pro se litigants rarely settle because the do not understand how inflexible the guidelines are
- lack of record keeping
- pro se litigants don't adequately represent themselves, which often creates a balancing act for the court.
- helping parties understand the appellate process, in particular the concept of a de novo appeal and the issue of bonds
- inadequate time to explain rulings
- not being prepared
- pro se litigants want legal advice without the expense of an attorney
- notice -- trying to find people to have them served (transient population)

DSCE Court Workers

- assisting parties with little or no legal experience in understanding rulings or orders entered at a hearing; helping them to understand options for recourse without providing "legal advice"
- pro se litigants often mistakenly file improper pleadings and/or fail to state a claim/request/relief, etc.
- giving jail sentences of six to 12 months for not paying support - serves times - bring them back to court and start the same cycle all over again
- large amounts of paperwork filed by pro se litigants which make requests the court would not be able to grant anyway (e.g., requests for holiday furlough from parties jailed for contempt of court, etc.)
- pro se litigants generally do not read information presented (including notices, pleadings, etc) and often need verbal instructions/warnings
- DCSE files 3 or 4 petitions on one person where children have lived with different relatives or whoever, with orders on each one
- pro se litigants often do not realize that once a case becomes active, parties cannot settle their own differences outside the court system without (potentially negative) consequences
- bad addresses – a lot of these people move so often - it is impossible to get personal service

Judges

- remaining in the role of impartial decider of facts while trying to obtain the information required to apply the law to the facts of each case
- extra docket time required to gather evidence needed to run support guidelines and make an informed decision
- the need to control the case to ensure that all necessary evidence is brought forward makes these cases a real challenge for the judges
- service of process; getting appropriate parties in court
- proceeding without inappropriate interruptions
- meaningfully conveying the court's rulings to pro se litigants
- creating a structure that puts pro se litigants on an equal footing but ensures that they can present necessary information
- due to heavy dockets, sufficient time to explain the process and rulings of the court so parties understand and have a meaningful experience
- trying to make sure it doesn't appear concessions given to pro se litigants

- dealing with evidentiary issues without the involvement of legal counsel
- avoiding too much judicial involvement when only one party has a lawyer
- being able to provide services or resources to unemployed parties to allow for employment