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THE FAMILY COURT

VIRGINIA L. NORTH

IN AN earlier article,¹ the writer set forth the manner in which juvenile and domestic relations cases were then handled by the public agencies of Milwaukee County and outlined the changes which would be made when the Family Court Law² became effective. The Family Court has now been in operation for ten months and it is not amiss to review its development and the legal philosophy on which it is based.

THE COURT

On the first Tuesday of April, 1934, the Hon. Richard J. Hennessey was elected to the ninth branch of the Circuit Court, created by the 1933 Wisconsin Legislature.³ Thereafter, at a meeting of the nine Circuit Judges of Milwaukee County, the Hon. August E. Braun was chosen to preside over the Juvenile Court for two years, beginning July 1, 1934, and the Hon. Richard J. Hennessey was chosen to preside over the Domestic Relations branch of the Family Court. The two judges then attended the annual conference of the National Probation Association, held at Kansas City May 18 to May 20, where they had the opportunity of conferring with judges of Juvenile and Domestic Relations or Family Courts from all parts of the United States. Following the conference, the two judges conferred with the County Board and made plans for the direction and management of the Family Court so that they were able to begin work immediately when Judge Hennessey took the oath of office on July 1.

Formerly, when there were only eight branches of the Circuit Court, the judge presiding over Juvenile Court was able to give only a day and a half to the work of the Juvenile Court. This arrangement limited the time which he was able to devote to any one case, and imposed a stupendous burden on the judge. He frequently held court for nine hours on the day set apart for Juvenile Court work, hearing as many as forty cases. Under the new law⁴ Judge Braun has given as much time to the Juvenile Court as is necessary to hear each case fully, ordinarily spending two full days a week, and occasionally, two and a half days. During the remainder of the week, branch No. 7 of the Circuit Court, presided over by Judge Braun, acts as a second branch

¹North, *Milwaukee's Approach to Juvenile and Domestic Relations Cases* (1934) 18 MARQ. L. REV. 241.

²Wis. Laws 1933 c. 428, as amended by Wis. Laws 1933, c. 432 §§ 2, 3, 4, and Wis. Laws Spec. Sess. 1933, c. 9.

³North, *Milwaukee's Approach to Juvenile and Domestic Relations Cases* (1934) 18 MARQ. L. REV. 241.

⁴WIS. STATS. (1933) § 252.07 (3) (b).

of the Domestic Relations Division of the Family Court for the trial of contested divorce cases⁵ and other contested matters falling within the purview of the law.⁶

The ninth branch of the Circuit Court, presided over by Judge Hennessey, commonly called The Family Court, hears motions to set temporary alimony, motions for contempt of court for non-payment of alimony, questions on the custody of children, modifications of judgments of divorce, default divorces and other default matters under the purview of the law.⁷ This work takes up five full days of court time and the remaining half day of the week is devoted to the management and direction of the work of the Family Court as a whole. The ninth branch is located in Room 500 of the Court House, the largest room assigned to the Circuit Court. This is not in line with the views of "The Child, the Family and the Court" which favors small court room and informal hearings.⁸ This situation is ameliorated, however, by the fact that the seats used by the general public are at a considerable distance from the bench and witness stand so that, if the proceedings are conducted in a normal conventional tone, as they generally are, they are inaudible to the spectators. This fact has tended to decrease the number of persons who attend court out of idle curiosity. Also where the parties seem reluctant to testify, the judge takes the parties, attorneys and divorce counsel into his chambers where the matter is discussed fully. Then the hearing is resumed in open court where a sufficient record is made and judgment rendered. In this connection, let it be said that the press has given excellent cooperation and there has been little or no sensational publicity concerning the proceedings in the Family Court.

During the first six months, the court, unaided by any staff of assistants, could accomplish little more than had been done formerly in the way of constructive reconciliation of parties, equitable adjustment of alimony and support money, and granting of custody in the best interests of the children's welfare. The court was, however, able to develop a specialized technique for the particular type of work⁹ and to eliminate the waste motion due to what Dean Roscoe Pound characterizes as "* * * the vicious practice of rapid rotation which prevails in the great majority of jurisdictions, whereby no one judge acquires a thorough experience of any one class of business * * *"¹⁰

⁵ WIS. STATS. (1933) § 252.07 (3) (b).

⁶ WIS. STATS. (1933) § 252.07 (3) (c).

⁷ WIS. STATS. (1933) § 252.07 (3) (c).

⁸ Dept. of Labor, Children's Bureau Publication No. 193, p. 42 (1933).

⁹ Dept. of Labor, Children's Bureau Publication No. 193, p. 36 (1933).

¹⁰ Roscoe Pound and Felix Frankfurter, *Criminal Justice in Cleveland*; Reports of the Cleveland Foundation Survey of the Administration of Criminal Justice in Cleveland. Cleveland Foundation, Cleveland, Ohio.

THE DEPARTMENT OF DOMESTIC CONCILIATION

The Department of Domestic Conciliation began work on January 2, 1935. During the preceding six months the judges of the Family Court were able to formulate plans for its proper organization and to estimate, to a certain extent, the amount of work which would have to be handled by it. Thus they were able to give practical assistance to the County Board which had had the matter of the department under consideration since early in May of 1934.¹¹ The meetings of the joint judiciary and finance committee of the Board were well attended by representatives of the various public departments which handle some part of the juvenile and domestic relations problems¹² and of various civic organizations such as the County Bar Association, the Lawyers Club, the Women's Bar Association, the League of Women Voters, and the Women's Court Conference.¹³ Final action was taken on October 23, 1934 and the department created with a director, with a salary of \$3,000-\$3,600 a year, three assistants at \$160-\$200 a month, and two clerical workers at \$125-\$150 and \$100-\$125 a month, respectively.¹⁴

The qualifications set up for the positions of Director of Domestic conciliation and Domestic relations office-investigators in department of domestic conciliation respectively, are as follows:¹⁵

Director

1. At least thirty years of age; at least two years accredited college or university training, with at least two years practical experience while employed full time in an approved social service agency, or the equivalent in education and training; or an attorney-at-law, at least thirty years of age, licensed to practice law and with at least seven years active practice of law.
2. Executive and administrative ability.
3. Such personality as is conducive to the maintenance of harmony among the personnel of the conciliation division, with the judges, under whose directions he or she is to work, and with the members of the public with whom he or she is likely to come in contact.
4. Such additional qualifications as may be prescribed by the County Civil Service Commission.

Office-Investigators

1. Graduation from a high school or training or experience of equivalent character and standard.

¹¹ Proceedings of the Joint Judiciary and Finance Committee of the Milwaukee County Board of Supervisors (May 2, 1934).

¹² North, *Milwaukee's Approach to Juvenile and Domestic Relations Cases* (1934) 18 MARQ. L. REV. 241.

¹³ Proceedings of the Joint Judiciary and Finance Committee of the Milwaukee County Board of Supervisors (May 2, May 16, May 29, 1934).

¹⁴ Proceeding of the Milwaukee County Board of Supervisors, Oct. 23, 1934.

¹⁵ *Ibid.*

2. Not less than two years of experience in social work.

3. Such additional qualifications as may be prescribed by the County Civil Service Commission.

On November 19, an oral examination was held for the position of Director. About thirty persons took the examination and the names of the three persons receiving the highest rating were certified to the judges of the Family Court.¹⁶ Mrs. Alice E. Newbold was appointed as Director of Domestic Conciliation. At the same time a written examination was given for the three positions of assistant. The names of the five persons receiving the highest rating were certified to the judges, and from that list they appointed Mrs. Ann Agulnick, Chester Peters and Andrew Doyle. The clerical workers were selected from the regular Civil Service lists. The authority of the legislature to confer upon judges and courts the power to appoint inferior officers, even when the duties of such inferior officers have no connection with the functions of the courts, has been recognized.¹⁷

The department is located next to Room 500, with a private entrance from the main corridor of the Court House, and opening directly into the court room and the judge's chambers. There is a waiting room, stenographic and filing room, and private offices for the Director and each of her assistants.

The workers are assigned by the Director, in turn, a day at a time, to receive all new complaints coming to the department. If the matter is one which can properly be handled by the department, it is then assigned to the worker in whose district the complainant resides. The County is divided, for the time being, into three sections, and the worker assigned to that section or district, handles all cases in that district. Each worker has certain days which he spends in his office when he is readily available for consultation in regard to the matters he handles. During the remainder of the week, the worker tends to the work which must necessarily be done away from the office such as interviewing employers and visiting in homes where the parties concerned have requested him to do so. The Director is in the office at all times supervising the work of the department as a whole to see that it runs smoothly, and is available for conferences with the judges and for interviews with attorneys requesting the services of the department. The department has been so well organized and the problems of administration so fully anticipated that the work moves along with swiftness and assurance. It is not necessary for any person to wait long

¹⁶ Official Certification of the Milwaukee County Civil Service Commission, (Nov. 26, 1934).

¹⁷ *Sartin v. Snell*, 87 Kan. 485, 125 Pac. 47, Ann. Cas. 1913E 384 (1912); *Stone v. Little Yellow D. Dist.*, 118 Wis. 388, 95 N.W. 405 (1903); *Foster v. Rowe*, 128 Wis. 326, 107 N.W. 635 (1906); *State ex rel. Gubbins v. Anson*, 132 Wis. 461, 112 N.W. 475 (1907); *In re Appointment of Revisor*, 141 Wis. 592, 124 N.W. 670 (1910).

before receiving attention and the waiting room is not crowded to the point where it takes in the aspects of a "coffee klatsch" where the persons waiting give each other large doses of back fence advice.

The question arises whether the functions of the department are judicial or administrative, and if administrative whether they are properly under the direction of the court. In this regard "The Child, the Family and The Court" says:

"That the facts which the agencies of the court unearth include elements of psychology and psychiatry unknown a few decades ago to laymen as well as to lawyers is here immaterial. The content of judicial decisions always varies. Some centuries ago the courts were concerned mainly with questions of land tenure; today problems of corporation law bulk large. Nor is it unprecedented for a court to take into account consideration of economics and social polity. The judicial process is generally influenced, consciously or subconsciously, by the thought of the era in which it is functioning,² as witness the legal history of labor problems. The most important change is that these courts combine three distinct functions: Investigation, decision, and treatment. This combination of functions is often said to result in an 'administrative tribunal,' but such phraseology is both loose and dangerous. People are too prone to give a complex situation a name then because they can recognize its tag they believe that they understand its nature. Courts have always had their agencies by which the decisions of the judges were made effective, from the clerks who recorded them to the sheriffs who acted upon them. The law has always had, too, its agencies of investigation, from the time when the judges traveled from county to county to pass upon the breaches of the king's peace which the assizes had revealed. On the other hand, decision, of course, is not a purely judicial role; from early times there have been executives and legislators. The remarkable fact is that these new tribunals study the whole situation, formulate their policies, issue the orders for carrying them out, and decide when and how they are being violated and what shall be done about their violation. 'Administration' is too colorless a word.¹⁸"

The same question was also under discussion before the Supreme Court of North Dakota¹⁹ where the constitutionality of the Mothers' Pension law was questioned because it was to be administered by County Court, where the administration included investigation and supervision. The opinion of the court is, in part, as follows:

"The laws of the state regarding the persons or estates of minors were enacted by reason of the state constitution, and jurisdiction in matters concerning either the person or estate or both, of minors, was given to the county court. The law under consideration is chapter 185,

¹⁸ Dept. of Labor, Children's Bureau Publication No. 193, p. 19 (1933). See also, Cardozo, *The Nature of the Judicial Process* (Yale University Press, 1921, reprinted 1925).

¹⁹ *Cass County et al v. Nixon*, 35 N.D. 601, 161 N.W. 204, L.R.A. 1917C 897 (1917).

being one which involves the care and protection of estates of minors of very tender years, and the care of the estate of such minors being one of the cardinal duties of county courts; Chapter 185 having appointed the county court to perform and execute the duties set forth in Chapter 185 toward and concerning the estate of such minors, the rendition of said duty by the county court towards such minors is the exercise of a judicial function, or the exercise of a power largely partaking of the nature of a judicial function, and is not, properly speaking, an administrative function. The exact line of demarcation where judicial functions end and administrative functions begin is not easily discernible, and is fraught with many difficulties, just as perplexing as it is to accurately determine the exact line of demarcation which segregates the animal from the vegetable kingdom, and as we draw near the extremity of one the shadows of the other, figuratively speaking, are falling across our pathway." And again:

“Even if the duties prescribed for the county courts in Chapter 185 should be conceded in some respects to consist and be of the nature of administrative duties, can it be said that the legislature, standing as the direct representative of the people,—of the whole public,—has not the authority to delegate those powers to the county court when it is to the direct interest of public policy and the welfare, life, and perpetuity of the state itself to do so, and where, as in this case, the power delegated in no way directly contravenes sec. 172 of the Constitution, either expressly or indirectly. The legislature unquestionably has the authority to distribute such minor power where, in its judgment, it may accomplish the greatest good in the interest of the state itself.”

Facilities for full investigation in regard to custody and alimony were recommended as the result of a child welfare investigation in Massachusetts,²⁰ and are provided for, to some extent, by the legislature,²¹ which authorizes the court to appoint an attorney, probation officer or some other suitable person to investigate and report to the court in relation to a pending divorce or libel to have a marriage declared void. This power of the legislature to impose non-judicial administrative duties upon the judges has been upheld by the courts.²²

The problems dealt with by the department are reconciliation, custody and alimony or support money. These problems are referred by the court, attorneys, and by the parties themselves. The applications for information and assistance are made at all stages in the procedural history of a case; before a complaint for divorce has been served, after service of the complaint but pending trial, during trial, after judgment, while the court has continuing jurisdiction over custody and alimony and support money but when no motion is pending, and during the

²⁰ *The Commonwealth of Massachusetts* (1931), Report of Special Commission established to Investigate the Laws Relative to Dependent, Delinquent and Neglected Children and Children Otherwise Requiring Special Care, p. 92.

²¹ *The Commonwealth of Massachusetts* (1931), *ibid* p. 255.

²² *Minsinger v. Rau*, 236 Pa. St. 327, 84 Atl. 902, Ann. Cas. 1913 E. 1324 (1912).

pendency of motions to raise or lower alimony or support money, change the custody of children, or to enforce the provisions of the judgment.

There can be no question of the right of the court to refer to the department divorce cases and motions which are pending before the court. As stated in Ruling Case Law :

“Since the court is, as a rule, desirous of all the light that can be derived from the fullest discussion of the case in hand, the court has undoubtedly a right to appoint or request an attorney at law, or other persons, as an *amicus curiae*, to appear in a case and act as its adviser, and make suggestions as to matters apparent upon the record, or in matters of practice arising in the course of the proceedings, but not as to matters which should be properly raised by an attorney at law on the pleadings, as by pleas, demurrers, exceptions and the like. The need of such assistance often arises where the rights of infants are endangered * * *.”²³

The powers of an *amicus curiae* are quite broad and cover the functions of the department in connection with court cases. In *Parker v. State*²⁴, where the attorney general appeared as *amicus curiae*, it was held that he had the right to introduce evidence. In *Jones v. Hudson*²⁵ where an outsider informed the court that no guardian *ad litem* had been appointed to protect the rights of certain minors, the court held that an *amicus curiae* may enlighten the court as to facts necessary for the protection of the right of infants. In *Muskogee Gas etc., Co. v. Haskell*²⁶, it was held that an *amicus curiae* may inform the court of a feigned issue.

The powers above set forth apply equally where the aid of the department is sought by the attorneys or parties themselves, as well as where the matter is referred by the court. In the case last cited²⁷ it was held that ordinarily there is no appointment of an *amicus curiae*. He merely suggests, *ex gratia*, to the court a point of law or a matter of fact. And, in the case of *In re Guernsey*²⁸ the court said: “It is not unusual, we believe, for all courts to hear and receive the statements or affidavit of one claiming to speak or act as *amicus curiae*, so to suggest to the court as that it may not be led unconsciously into error, and where there may seem to be collusion between parties by which another party may be injured, or for any cause which the court is at liberty to recognize as proper for the interference of such persons.”

²³ 1 R.C.L. 1051; *In re Arzeman*, 40 Ind. App. 218, 81 N.E. 680 (1907).

²⁴ *Parker v. State*, 133 Ind. 178, 32 N.E. 836, 33 N.E. 119, 18 L.R.A. 567, Note Ann. Cas. 1915A 196 (1893).

²⁵ *Jones v. Hudson*, 93 Neb. 561, 141 N.W. 141, 44 L.R.A. (n.s.) 1822 (1913).

²⁶ *Muskogee Gas Co. v. Haskell*, 38 Okla. 358, 132 Pac. 1098, Ann. Cas. 1915A 190 and note (1913).

²⁷ *Muskogee Gas Co. v. Haskell*, 38 Okla. 358, 132 Pac. 1098, Ann. Cas. 1915A 190 (1913).

²⁸ *In re Guernsey*, 21 Ill. 443 (1856).

As was pointed out above, an *amicus curiae* has the power to introduce testimony.²⁹ Actually it has not been necessary, so far, for the Director of the department to subpoena witnesses and introduce testimony formally. When all the information concerning the case has been gathered, it is discussed with the attorneys for both parties if they so desire, the attorneys having first been notified of the department's proposed action before the investigation was undertaken. A conference is held in the office of the Director and in many instances when all the facts appear, it is unnecessary to continue with any further court action. For example, when a contempt motion for non-payment of alimony is pending, and it is ascertained from a wage statement, signed by the ex-husband's employer that he is making fifteen dollars a week, and the court records show that he has been paying six dollars a week, although the judgement provides for ten dollars a week, it is unnecessary to proceed to a court hearing. It is obvious on the face of the matter that a man earning fifteen dollars a week cannot pay ten dollars a week alimony or support money. The contempt motion is then dismissed by consent of the parties and their attorneys. In other instances, it may be felt that a court hearing is still advisable, but the parties and their attorneys agree, as to the truth of the facts contained in the department's report. The report can then be submitted to the court orally or in written form and be used to guide the court's decision. Rules dispensing with the introduction of evidence on points not disputed by the parties have been sustained as reasonable.³⁰ Of course, if there is any question as to the truth of the department's report, the persons from whom the information was received can be subpoenaed and sworn as witnesses subject to cross examination and all the rules of evidence. The information which the court receives from the department, by consent of the parties and their attorneys, or as evidence in open court, is clearly distinguishable from the casual and one-sided information received by the court in *Denning v. Denning*.³¹ In that case one of the parties discussed the case, or the matters involved in it, with the judge privately and not in the presence of the other party or his attorney. Such procedure is, of course, to be avoided and does not obtain in the Family Court.

The next group of cases to consider is that submitted to the department after judgment has been rendered but where no motion is pend-

²⁹ *Parker v. State*, 133 Ind. 178, 32 N.E. 836, 33 N.E. 119, 18 L.R.A. 567 (1893). Note Ann. Cas. 1915A 196.

³⁰ *Mills v. United States Bank*, 11 Wheat. 431, 6 L.ed. 512 (1826); *Roberts v. White*, 32 R.I. 185, 78 Atl. 497, Ann. Cas. 1912D 793 (1911); Note Ann. Cas. 1914B 1186.

³¹ *Denning v. Denning*, (Wis. 1935) 259 N.W. 108.

ing. The jurisdiction of the court in a divorce case is a continuing jurisdiction. It lasts until the youngest child for whom support money is awarded reaches an age where he can support himself, and until all matters covered by the judgment are fully performed. It has been held that a court may do all acts necessary to carry its judgments into effect.³² In *State ex rel. Barker v. Assurance Co.*³³ where the power of the Supreme Court to issue an injunction was questioned, the Court said: " * * * it would be useless for a court to try a cause if it had no authority or means by which it could enforce or protect the rights and interests of the parties involved therein after they had been adjudged.

"It seems to me to be unanswerable to say that, where a court is given express authority to try a cause, it must also by implication have the power to do all the things that are incident to that trial or are necessary to be done in order to carry into full force and effect the judgment or decree the law authorized the court to render therein."

The clerk of the court, under the direction of the court, has the right to take all steps necessary for the collection of alimony³⁴ which must necessarily include the ascertaining of facts.

The third group of cases are those coming to the department before any divorce proceedings have been instigated. Where these matters necessitate a criminal warrant, they are referred immediately to the District Attorney. Likewise where the matter falls within the purview of some other public department, the applicant is referred to the proper place. Where the person seeking aid needs and is desirous of social case work and where there is a private social agency established to care for the particular problem presented, the work of that social agency is explained to the applicant, and if the applicant so desires, the matter is referred to the proper agency. The department is thus able to fulfill a worthwhile function in interpreting community facilities to those who need them. In the first instance the private social agencies were established to dispense aid. During their years of experience in this line, they developed a specialized technique for assisting people in resolving their own difficulties. As the work of relief was taken over by the public agencies, the private agencies have offered their technique for the use and benefit of those not needing financial or material aid but in need of understanding guidance in difficult situations. This change in function is not fully realized by the public at large and the department is assisting in this interpretation.

³² *Taylor v. Hulett*, 15 Idaho 265, 97 Pac. 37, 19 L.R.A. (N.S.) 535 (1908); *Dorr v. Rohr*, 82 Va. 359, 3 Am. St. Rep. 106 (1886).

³³ *State ex rel. Barker v. Assurance Co.*, 251 Mo. 278, 158 S.W. 640, 46 L.R.A. (N.S.) 955 (1913).

³⁴ WIS. STATS. (1933) c. 247.

In some instances the matter cannot be referred to any other place by the department. Either there is no agency especially equipped to deal with the situation, or the applicant is reluctant to go to the proper agency—sometimes because of the association in his or her mind between the agency's services and charity, or because of some other prejudice. What is to happen to this residuum of cases? *Quaere*: Should the court sit by and watch the headlong disintegration of the family until the slender bond that holds it together is completely ravelled, and divorce proceedings are instigated? This would be a needless waste of family unity which the courts reiterate is the foundation of society.³⁵

The method of work used by the department is the same in all the cases handled by it, with varying emphasis depending upon the use which is to be made of the information gathered, or the type of assistance that is sought. The case is first cleared through the department's master file to see if it has ever been handled there before, and if so, can be referred immediately to the worker who has charge of it. The case is then cleared through the public and private agencies. This is done so as to prevent duplication of efforts and to gather together as quickly as possible all the information necessary to be of constructive assistance to the family. For example, there is no need to bring contempt proceedings against a man for non-payment of alimony, if he is already on probation to the municipal court for non-support. This, incidentally, is a detail which the applicant frequently neglects to mention. Contempt proceedings under such circumstances can do no further good and take on the color of persecution. There is no need for the man to lose a day's work in order to come to court and explain this situation for himself.

After the case has been cleared, it is handled from the office whenever possible. Letters are written for work records and employer's contacted by telephone. The employers have been cooperative with the department and in some instances, where they would not otherwise have done so, have put men back to work when they understood that the department was to supervise the case. In these instances the men had been laid off because there had been too many complaints made to the employer about non-payment of bills, or the men had had to take off from work for multiple court appearances. Visits are made to the home of the family only when the family itself is agreeable that the worker do so, or where the court has ordered such a visit in connection with a matter that is pending in court.

The court and the department have now had time in which to

³⁵ *Deyoe v. Superior Court*, 140 Cal. 476, 74 Pac. 28, 98 Am. St. Rep. 73 (1903); *Maynard v. Hill*, 125 U.S. 190, 8 Sup. Ct. 723, 31 L.ed. 654 (1888).

shape their work and to find out what is needed to make their work more efficient. To this end two bills have been introduced into the 1935 session of the Wisconsin legislature at the request of the Circuit Judges of Milwaukee. Bill No. 570A seeks to clarify the powers of the Department of Domestic Conciliation, and Bill No. 571A provides that the Divorce Counsel in Milwaukee County should be appointed, under the rules governing Civil Service, by the judges of the Family Court.

In concluding this review of the development of the Family Court, it can be checked against the standards recommended in "The Child, the Family and The Court,"³⁶ as adapted from *Juvenile-Court Standards*,³⁷ and outlined below:

The Judge

"1. The judge should be chosen because of his special qualifications for the work. The terms of office should be sufficiently long to make specialization possible, preferably not less than six years. The judge should be able to devote such time to the work of the court as is necessary to hear each case carefully and thoroughly and to give general direction to the work of the court."

Here, the judges who preside in Family Court are not elected by the public to fulfill that particular purpose, but they are chosen from among the nine circuit judges for the particular work, and their aptitude and liking for the work are taken into consideration in making this choice. The term of office of the judges is six years so that they are relatively free from political considerations, although their term of service in the Family Court is for only two years at a time. They may, of course, be selected for succeeding terms. As even a two-year term of service in this specialized field is a new procedure in Milwaukee County, it is probably well to try it out and test results before making the term of Family Court service as long as that above recommended. Adequate time is allowed to the judges for their work so that they can hear cases fully and direct the court work.

The Probation Staff

"2. Not more than 50 cases should be under the supervision of one probation officer at any one time. Probation officers should be chosen from an eligible list secured by competitive examination. The minimum qualifications of probation officers should include a good edu-

³⁶ Dept. of Labor, Children's Bureau Publication No. 193, p. 35 *et seq.*

³⁷ *Juvenile Court Standards*, report of a committee appointed by the Children's Bureau, August 1921, to formulate juvenile court standards, adopted by a conference held under the auspices of the Children's Bureau and the National Probation Association, Washington, D.C., May 18, 1923 (U. S. Children's Bureau Publication No. 121, Washington, 1923).

cation, preferably graduation from college or its equivalent or from a school of social work; at least one year in case work under supervision; good personality and character; tact, resourcefulness and sympathy. The compensation of probation officers should be such that the best types of trained service can be secured. The salaries should be comparable with those paid to workers in other fields of social service. Increases should be based on records of service and efficiency."

The Department of Domestic Conciliation, being a public department, cannot, of course, refuse any case which is properly within its scope. At the time the department was established there were already four hundred cases waiting to be referred by the court. That group alone would have raised the case load of each of the three workers above the recommended number and since then new cases have literally poured in and each worker has over 300 cases under his care. It has, therefore, been necessary for the department to do both extensive and intensive work. In many cases a very small investment of time is able to produce good and lasting results. An example of this is the case of a man who was greatly in arrears with alimony. The assistance of the department in working out a practical budget with regular weekly payments for his former wife, and the department's assurance that he will not be brought to court so long as he continues these payments regularly, has resulted in the former wife being taken off the rolls of the relief department. Intensive case work is reserved for those cases only where the parties are eager for it and where there is probability that it will be effective. Case work is, essentially, helping people to help themselves and cannot be of value unless the persons worked with really want it, any more than a physician can be successful in treating tuberculosis unless the patient is willing to follow the regime necessary to win his way back to health. As stated above, the workers are selected by civil service examination. The qualifications set up by the County Board do not match those recommended, but the actual qualifications of the Director and workers are fully as high as those recommended. The salaries are as good as those paid by the private agencies in Milwaukee and increases are based on merit.

Pre-Court Work and Investigation of Cases

"3. The judge or a probation officer designated by him should examine all complaints and after adequate investigation should determine whether formal court action is to be taken. It should be the duty of the court to bring about adjustment of cases without formal court action whenever possible.

Social investigation should be made in every case and should be set in motion at the moment of the court's earliest knowledge of the

case. Psychiatric and psychological study should be made at least in all cases in which the social investigation raises a question of special need for study and should be made before decision concerning treatment, but only by a clinic or an examiner properly qualified for such work."

The only complaints coming to the department before court action in which the department has the decision as to whether court action shall be taken, are complaints for non-payment of alimony. The recommended procedure is followed in these cases.

It is impossible to carry out the recommendation in regard to all cases appearing before the court, in view of the limited staff in the department. It is also questionable whether it should be followed in divorce cases unless some particular problem is indicated by the pleadings or at the hearing. The County Mental Hygiene Clinic is available for psychological and psychiatric examinations where they are necessary.

Hearings and Orders.

"4. Hearings should be held promptly, and unnecessary publicity and formality should be avoided.

Sufficient resources should be available for home supervision or for institutional care, so that in disposing of each case, the court may fit the treatment to the individual needs disclosed."

Motions are heard promptly, all new motions being heard each week and disposed of at the same time if adequate information is furnished to the court. Default divorce cases can be heard within a month of the time the motion for trial is filed. Contested divorce cases cannot be heard, in the regular order, for about a year, but the calendar is being gradually brought up to date since the Family Court was established. It is the policy of the Court, however, not to hurry divorces. Hearings are not informal except for the partial hearings in chambers as described above. The proceedings do receive publicity but it is somewhat restrained.

There are sufficient resources through the public and private agencies for placing children in institutions or boarding homes in the few cases where neither parent is the proper party to receive custody of the children. The staff of the department is not, however, large enough to supervise custody of children in their own homes in the border line cases where the parents are doubtful custodians. Perhaps working relations could be brought about with the private agencies for this purpose.

Probationary Supervision

"5. A definite plan for constructive work, even though it be tentative, should be made and recorded in each case and should be checked

up at least monthly in conference with the chief probation officer or other supervisor.

"Reporting, when rightly safeguarded, is a valuable part of supervision, but it should never be made a substitute for more constructive methods of case work. Frequent home visits are essential to effective supervision, knowledge of the assets and liabilities of the family, and correction of unfavorable conditions.

"Reconstructive work with the family should be undertaken whenever necessary, either by the probation officer himself or in cooperation with other social agencies. Whenever other agencies can meet particular needs their services should be enlisted.

"Provision should be made by the court for collection of orders in non-support and illegitimacy cases, and for assistance, when necessary, in the collection of alimony orders."

The standards set in the first three paragraphs are met in the cases in which intensive case work is done. In the other cases, the workers, under supervision of the Director, must use their discretion as to how far to go in each case. As previously shown, the private agencies are used wherever possible.

Collection in non-support cases³⁸ and illegitimacy cases³⁹ are made through other public departments. Bill No. 570 seeks to make payments in non-support cases prior to the issuance of a warrant, payable through the office of the Clerk of the Circuit Court. All payments of alimony are payable through the office of the Clerk of the Circuit Court and the clerk and divorce counsel, under direction from the court, may take all steps necessary to enforce payments.⁴⁰

Record System

"6. Every court should have a record system which provides for the necessary legal records and for social records covering the investigation of the case and the work accomplished. The records of investigation should include all the facts necessary to a constructive plan of treatment. The records of supervision should show the constructive case work planned, attempted, and accomplished, and should give a chronological history of the supervisory work."

The court records are kept in the office of the Clerk of the Circuit Court and are open to the public unless sealed by order of the court.⁴¹ The records of the department are kept in the department and are confidential but the material in them is discussed with the parties and

³⁸ North, *Milwaukee's Approach to Juvenile and Domestic Relations Cases* (1934) 18 MARQ. L. REV. 241.

³⁹ North, *Milwaukee's Approach to Juvenile and Domestic Relations Cases* (1934) 18 MARQ. L. REV. 241.

⁴⁰ WIS. STATS. (1933) § 247.29.

⁴¹ WIS. STATS. (1933) § 252.07 (9) (b).

their attorneys, and with the court in connection with a court hearing.⁴² The department's records conform to the standard in the cases receiving intensive case work, but not otherwise.

The discussion of standards has been in relation to the Domestic Relations branch of the Family Court and to the Department of Domestic Conciliation. It does not refer to the work of the Juvenile Court and its Probation Department, as that is outside the scope of this article.

⁴² WIS. STATS. (1933) § 252.07 (9) (b).

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