

**Statement of the
Council for Court Excellence
to the
United States House of Representatives
Committee on Government Reform
Regarding the
Performance of the Superior Court of the District of Columbia**

April 23, 2004

Introduction

Good morning, Chairman Davis, and other members of the U.S. House of Representatives Government Reform Committee. Thank you for inviting the Council for Court Excellence (CCE) to provide testimony at today's oversight hearing to review the performance of the DC Superior Court with particular focus on the Family Court, the Probate Division, and other court administration topics. My name is Elliott Hall, and I have served as the Chair of CCE since June of last year.

I am honored to present the views of CCE to this Committee. For the record, let me summarize the mission of the Council for Court Excellence. The Council is a District of Columbia non-partisan, non-profit civic organization that works to improve the administration of justice in the local and federal courts and related agencies in the Washington, DC area. Since 1982, CCE has been a unique resource for our community, bringing together members of the civic, legal, business, and judicial communities to work jointly to improve the administration of justice. We have worked closely with House and Senate DC Subcommittees in the past on such issues as the DC Jury System Act of 1986, the DC Criminal Justice Coordinating Council, and the development of the DC Family Court Act of 2001.

No judicial member of CCE participated in or contributed to the formulation of our testimony here today.

The Family Court

The Council for Court Excellence is about to publish a comprehensive report on the performance of the District of Columbia's child protection system. The report addresses the city's compliance with the Adoption and Safe Families Act and the DC Family Court Act of 2001. The report is based on comprehensive research CCE conducted in the second half of 2003, with generous funding from Congress and the mandate to "continue ongoing independent oversight...[and to provide]...an annual report to Congress on the implementation of the District of Columbia Family Court Act of 2001 and the [federal] Adoption and Safe Families Act of 1997 (ASFA)."

In summary, the CCE research results show that neglected or abused DC children are in far better hands now than they were a few years ago. In the aggregate the city's child protection system is performing at a far higher level than before, though there is still both room and need for improvement overall. It is also worth remembering that improved overall performance can never guarantee against bad occurrences in an individual case.

In our opinion, the improved overall performance of the District of Columbia's child abuse and neglect system over the past three years is attributable to several factors:

- stable, superior leadership of the responsible DC governmental agencies, especially the Family Court and the Child and Family Services Agency (CFSA);
- collaboration among the Family Court, CFSA, and the Office of Corporation Counsel, which has led to joint planning and implementation of system reforms and of the important organizational reforms mandated by the Family Court Act;
- substantial increases in funding to all three of those entities, which for the first time have provided each of them with adequate resources to discharge their responsibilities; and
- a shared commitment to do better for the city's vulnerable children by "managing by the data," that is, by routinely measuring performance against statutory and other legal benchmarks.

In order to trace progress over time, CCE's report compares the city's performance on behalf of children whose neglect or abuse cases entered the system over three time intervals:

- 1) 1998 and 1999 - prior to the city's implementation of ASFA or the Family Court Act;
- 2) 2000 and 2001 - the initial ASFA implementation period; and
- 3) 2002 and 2003 - continued ASFA implementation and the Family Court Act implementation period.

The CCE report documents steadily increasing compliance rates, over these three time intervals, with federal and DC ASFA deadlines. That increased compliance, no doubt, has been aided recently by the significantly improved practices and procedures implemented as required by the Family Court Act. The report also documents nearly complete compliance with each requirement of the Family Court Act, though progress is slower on the Mayor's Safe Passages data system.

Even more important, the case-processing improvements are beginning to translate into shorter stays in foster care for many DC children. Data from 2002 and 2003 indicate that those children who can safely be reunited with their families are going home in less than one year's time. This is a significant improvement from pre-DC ASFA days, when it took nearly two years to reunify children with their families.

While some important questions remain unanswered, the CCE report is largely a good news story. Additional work must be done to ensure better outcomes for all neglected or abused children, but DC child welfare system leaders deserve praise for the excellent work they have done to date. The Mayor, the DC Council, and Congress also deserve praise for increasing both local and federal funding to this system; those investments are producing better outcomes for the city's neglected and abused children.

Probate Division: Adult Guardianship and Conservatorship

On June 15 and 16, 2003, the *Washington Post* published a series on the DC adult guardianship and conservatorship system, which extensively researched and documented lax oversight by the Court of adult wards of the court and patterns of neglect by some of the DC Superior Court's Probate Division Panel of approved attorneys who are eligible for such appointments.

On June 17, 2003 the Chief Judge of the DC Superior Court issued Administrative Order 03-16, "Relating to Probate Division Panels and Oversight." That order sought to address some of the issues in the June 2003 *Washington Post* series, including (1) requiring Probate Division Panel attorneys to complete at least six hours of probate training and to submit a certificate from Bar Counsel that they have no disciplinary actions on record or pending; (2) requiring judicial officers to appoint only attorneys listed on the Probate Division Panel; and (3) barring counsel or fiduciaries from accepting more guardianship or conservatorship cases unless they have timely filed all reports and verified they have personally verified the location, health, and availability of placements for wards already under their care.

On June 19, 2003 CCE joined with the Bar Association of DC to form a Probate Review Committee "to discuss issues brought to public attention" by the articles. The Review Committee held nine meetings between June 17, 2003 and February 5, 2004 and, at its first meeting, "determined to use the articles as a basis for examining the serious problems perceived to exist in the Probate Division and to recommend solutions to any problems identified by the Committee."

The Review Committee issued its final report to Chief Judge King on February 25 for a two month period of review. The report has not been made public, pending action by the DC Superior Court. The report offers recommendations addressing selected Probate Division administrative and operating procedures, including providing direct judicial oversight of guardianship and conservator reports; enhancing communication between the probate bar, the bench, and Probate Division staff; suspending or disqualifying from the Fiduciary Panel seriously derelict probate attorneys; and other issues. It excluded from its review the perspectives of clients' families, groups who provide legal services to the elderly, the DC Government, and jurisdictions which successfully oversee the adult guardianship and conservatorship process.

CCE supports the findings and recommendations of the Probate Review Committee as far as they go, but strongly believes that further attention is required to address and remedy the issues brought to public light. Among the most pressing include:

- Compliance with the DC Court of Appeals *Orshansky* decision. Are independent experts now being routinely appointed to evaluate whether guardianship is needed?
- The decision to appoint a guardian for the elderly or disabled is frequently made outside of their presence or knowledge. Are there alternatives to having the incapacitated person appear in court? For example, Idaho law provides that the venue for guardianship

proceedings for an incapacitated person is in the place where the incapacitated person resides or is present.

- The *Washington Post* observed that the determination for guardianship or conservatorship takes place in “usually around 10 minutes.” Is this an appropriate length of time to make such a fundamental decision about a person’s life?
- Exploring whether to place a cap on the number of guardianship and conservatorship cases assigned at any one time to each Probate Division Panel attorney to avoid case overload, particularly for solo practitioners.
- Promulgating and publishing to the community and interested persons, as well as the bar, strict standards for Probate Division Panel eligibility, including training requirements, proof of malpractice insurance, and strict disqualification standards.
- Placing a priority on family members serving as guardians, and having strangers serve as guardians only as a last resort.

If meaningful and systemic reform is to occur, more work remains to be done by the Court, the Bar, by government agencies, and by stakeholder groups, including the Council for Court Excellence.

General Court Administration

With regard to general court administration, similar to our analysis of the Family Court and the Probate Division, there is some good news to report since our last appearance before this Committee in June of 2002. CCE’s Court Observation studies of the Civil and Criminal Divisions of the Superior Court, completed in 2001 and 2002 respectively, remain true today with respect to the high caliber of judges and their success in providing the community with a high quality of justice. We also want to recognize the Court for having written and published a Strategic Plan and for their follow-up in the form of four upcoming town hall meetings that will give residents in all wards an opportunity to share their views about the DC Superior Court and the Court of Appeals and to talk with court leaders about important issues facing residents throughout the District. Such outreach is an important step. We also applaud the Court’s establishment of a pilot Community Court for Police Districts 6 and 7, and can report that after only a two-year period, this pilot is functioning fairly well. This court diverts people charged with low-level non-violent misdemeanors to needed services or to community service as an alternative to incarceration in an attempt to stop repeat offenders.

The establishment of a community court was one of the twenty-seven recommendations made in CCE’s April 2001 report, *A Roadmap to a Better DC Criminal Justice System*. CCE’s December 2003 report, *Two Years Down the Road*, is the result of a ten-month CCE study conducted last year with generous funding from Congress. The study charted the progress of

efforts made to increase the efficiency of the DC criminal justice system based on the twenty-seven recommendations of our April 2001 *Roadmap Report*. The new report describes the work of over thirty separate government task forces that worked on aspects of the *Roadmap Report* and recognizes that, through the leadership and commitment of the DC Superior Court and other stakeholder agencies, the DC criminal justice system is indeed headed down the positive reform path. But much work remains to be done, including expanding the Court's work in applying revised scheduling practice to the felony arena, which consumes most of the police overtime related to prosecutor and court appearances.

In 2002, CCE testified before this Committee that one of the major findings of the DC Superior Court Observation projects was insufficient court-wide signage including a full building directory at least in the lobby, insufficient signage outside the courthouse, and inadequate signage in foreign languages, resulting in barriers to finding and entering the courthouse, locating where to go once inside, and obtaining other needed information. We testified two years ago that although we presented these concerns to the Court, we were disappointed to find that the very same concern was expressed in the second court observation study conducted some nine months later. It is now two years later and we are again disappointed that the Court, even with a budget request for major renovations, restoration, and repair needs, has not yet sufficiently improved their existing directories and signage.

A second concern is the Court's lack of compliance with the Americans with Disabilities Act requirements. While the Court does have a Subcommittee on Improving Court Access that includes individuals with disabilities who use the courthouse, and that some attention has been given to improving courtroom accessibility and other access issues, there are still many other barriers including the Courthouse's heavy front doors. Those doors were mentioned in a recent Washington Post District Weekly article on the challenges faced by disabled people throughout the District of Columbia.

In addition to the lack of accessibility, we submit that the Court should be more concerned with the lack of audibility of court proceedings. In CCE's Court Observers Reports, it was noted that inside the courtroom, the Court should employ a better microphone system for judges, lawyers, and witnesses because it is difficult to hear the proceedings. To our knowledge, this problem has not been resolved since both reports were issued.

CCE is also concerned about the issue of delays in production of court transcripts, which has a direct, negative impact on both the DC Superior Court and on the Court of Appeals. Although Chief Judges Wagner and King indicated to us in an April 2002 letter that the problem was on the verge of being solved, CCE still receives calls from frustrated practitioners and litigants who cannot obtain transcripts in a timely way in order to appeal their cases. It is our understanding that this problem continues today. In fact, the Courts' 2003 Annual Report shows that the average time it takes from notice of appeal to the filing of a trial court or agency record is ten months. In other words, it takes ten months before the briefing process can even start. This is a substantial reason why the overall time on appeal in the DC Court of Appeals is almost 21 months, far too long for litigants to get resolution of their cases.

Finally, we are concerned about the lack of transparency of court information in general and budgetary information specifically from a public institution. Nearly every state court hosts its own website and many of these are excellent sources of information for the public. The DC Superior Court neither hosts its own website nor provides budget information to the public. What information is provided on the Court's website is extremely limited. Any citizen who wishes to find out how the Court's funds are being spent simply does not have access to this information; CCE's attempts to obtain copies of the Court's budget have routinely been met with resistance. While the Court prints an Annual Report, its budget other than total numbers is not included in the Annual Report, and the Report is not on its website.

We commend this Committee for your policy and fiscal leadership in overseeing the Courts in the District of Columbia and thank you for holding this oversight hearing which we believe should be done on an annual basis. We also thank the DC Courts for the plans they have laid out and the manner in which they have received our various recommendations. We continue to look forward to working with the DC Courts and with this Committee. I am happy to answer your questions at this time.