Catholic University Law Review

Volume 6 | Issue 3 Article 2

1957

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WASHINGTON'S NEW DOMESTIC RELATIONS TRIBUNAL

by

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For many years, The Federal District Court in the District of Columbia has been burdened with hearing all domestic relations cases for District residents. Aside from the fact that it was the only Federal court in the United States that was vested with jurisdiction to grant divorces and to approve the custody and adoption of children, the average 2,500 cases filed in this particular field of law was crowding an already overloaded trial docket to the point where important Federal cases were being delayed and divorce litigants themselves were being required to wait several years before reaching trial.

The move transferring the jurisdiction over domestic matters from the United States District Court to the Municipal Court had the hearty endorsement of the local Bar Association of the District of Columbia, members of the United States District Court, the United States Court of Appeals and the Supreme Court as well as of course the Municipal Court members and those of the Municipal Court of Appeals. It had the approval of the Board of Public Welfare, the Jewish Social Service Agency, the Federation of Protestant Churches, Catholic Charities for the District of Columbia, the young political clubs of both major parties in the District of Columbia and many other local organizations.

After hearings before the District Committees of both Houses of Congress for consideration of two separate types of bills, one of which would have created a separate municipal court known as "The Family Court," Congress passed a compromise bill (Public Law 486—84th Congress) titled "An Act to Establish a Domestic Relations Branch in the Municipal Court for the District of Columbia, and for other purposes" which was approved April 11, 1956. This action was in accord with the trend of prior legislation respecting the Municipal Court, and with the

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apparent intent of all those persons and groups interested in the improvement of justice in the District of Columbia, starting with the consolidation in 1942 of the former municipal court and the police court, to strengthen and enlarge the jurisdiction and personnel of the Municipal Court to the end that it would ultimately assume many of the judicial functions of a purely local nature now being handled by the Federal District Court and thereby enable that court to devote more of its time to a speedier determination of its fundamental litigation. The creation of the Domestic Relations Branch was, therefore, a significant step towards that goal.

The new branch was clothed with all the authority and powers heretofore vested in the Federal court in the handling of domestic relations cases. However, Congress disapproved the manner in which the District Court had been referring every case upon filing in which alimony, custody and support of minor children was involved to a domestic relations commissioner for investigation and report, and it failed to enact the bill before it which had made provision for the continuance of this procedure. Hence, the new branch of the court does not have authority to appoint and use the services of such commissioner and his assistants for investigative purposes and the judges must undertake a large part of this work.

Although the work in the Civil Division of the Municipal Court had been current for some time, the Act provided for the addition of three new judges to the newly created branch to assure the prompt hearing of all domestic relations matters and to mitigate against any chance of a backlog in this field. It was also provided that the new branch should not assume the disposition of any cases that had already been filed in the District Court of which there had accrued some 2,000 awaiting trial. None of these old cases were transferred to the Domestic Relations Branch of the Municipal Court but remain to be ultimately disposed of by the District Court.

This dual jurisdiction in the two courts has resulted in some conflict although it had been hoped that the problem might be resolved by a concentrated drive by the District Court judges to dispose of all remaining domestic relations cases. However, the judges of the new branch have seen no valid reason why cases subsequently filed and reaching issue in the Municipal Court between the same parties with cases pending in the District Court should be delayed or continued until the cases first filed should ultimately be reached in the District Court. As a matter of fact, if the case in the Municipal Court should be reached for trial first and a judgment entered therein, this would in all probability dispose of the dispute between the same litigants in the District Court and would assist that court in reducing its backlog in the domestic relations field.

The new court has been given the following jurisdiction:

> "The Domestic Relations Branch and each judge sitting therein shall have exclusive jurisdiction over all actions for divorce from the bond of marriage and legal separation from bed and board, including proceedings incidental to such actions for alimony, pendente lite and permanent, and for support and custody of minor children; applications for revocation of divorce from bed and board; civil actions to enforce support of minor children; civil actions to enforce support of wife; actions seeking custody of minor children; actions to declare marriages void; actions to declare marriages valid; actions for annulments of marriage; and proceedings in adoption.
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> "Nothing in this Act shall be construed to divest the United States District Court for the District of Columbia of jurisdiction and power to consider, and to enter and enforce judgments, orders, and decrees in such court prior to the effective date of this section to the same extent as if this Act had not been enacted."

On July 17, 1956, the President with the approval and consent of the Senate, appointed three attorneys selected from the District of Columbia to serve in this new branch, and they were sworn into office in the late summer. Thirty days after the date that they were duly qualified, the new Domestic Relations Branch became operative on September 17, 1956.

The three members of the Domestic Relations Branch do not rotate in their court assignments with the other branches of the Municipal Court, but the Chief Judge is authorized to assign them to other civil branches if their work is current and to assign other Municipal judges to sit in the new branch if assistance is required.

The statute provides that the Federal Rules of Civil Procedure shall be followed wherever applicable. The three judges, with the concurrence of the Chief Judge of the Municipal Court, were directed to appoint new clerks for the branch and to adopt suitable rules governing practice and procedure therein. About seventeen new rules particularly affecting the domestic relations procedure were approved and promulgated. As the new branch progresses, additions and amendments necessarily will be made to this original set of rules. In addition, the civil rules affecting all "M" cases in the Civil Division of the Municipal Court were approved for procedure in the new branch wherever applicable.

Three separate courts were established in the new branch and each of the associate judges was assigned to sit in one of these courts in rotation for the period of a month or more. The courts were designated:

Domestic Relations Court No. 1 for the handling of all contested cases;

Domestic Relations Court No. 2 for the pre-trial conferences; and

Domestic Relations Court No. 3 for motions, preliminary orders, adoption references and decrees, uncontested cases and as liaison for all matters coming from the clerk's office of the branch.

This method of assignment has proved satisfactory in the course of the new branch's five months of operation. Of course, the assignment is

flexible so that any associate judge may assist in the work of the other two judges if their calendars are very heavy or they should be engaged in protracted hearings.

At the very start of the new branch, the three associate judges were determined to make every effort to preserve the family unity, wherever possible and particularly in those cases where the welfare of small children was involved. It was generally recognized that the District of Columbia in addition to the party litigants had an interest in domestic relations cases and that it is the duty of the judges in the public interest to effect reconciliations between disputing husbands and wives if it could be accomplished by voluntary agreement of the parties.

To that end and in the face of considerable concern and criticism on the part of trial attorneys in this field, it was decided to establish procedure for reconciliation conferences. All three judges had no feeling of assurance that they could guarantee the success of the conferences but they were determined to try. Even if only a very low percentage of these conferences resulted in a successful reconciliation of the parties, that in itself would make the effort worthwhile and would contribute to the reduction of the tremendous number of divorces and marriage failures in this country. Several state courts have inaugurated reconciliation procedures and have reported substantial successful results. The Domestic Relations Branch could therefore not lag behind leaders in these other jurisdictions.

Accordingly, a rule was adopted providing for reconciliation conferences both *before* suit was filed and *after* suit was filed. In the first instance, if a married couple were experiencing domestic difficulties and desired to discuss their problems with one of the judges of the new branch looking to a possible adjustment of their controversy through the aid and counsel of a disinterested party, a form of petition has been provided which they could *jointly* fill out and sign in the clerk's office asking for such a conference. No fee is charged. The clerk then sets the petition down on the conference calendar of one of the judges and notifies the applicants of the date thereof. On that date, the parties voluntarily appear. They may be accompanied by their attorneys if they desire. The judge then discusses the problems involved in their situation, first individually and then jointly, and endeavors to point out to each the weaknesses or fallacies of their positions and to recommend what in his opinion each must do to adjust his or her difficulties. If, in the conference, it is revealed that there are matters which require the judge to suggest counseling with experts in other fields, such as the psychiatrist, the physician, the religious leader of their faith, or the social welfare worker, in order that more competent information and counseling can be secured, he will direct the parties to voluntarily consult this new source, if they are finan-

cially able to pay for the expense of such expert counselling or, if they are indigent or in the low income bracket, he will endeavor to refer them to a source available through the District of Columbia Health Department or the Family and Child Welfare Section of the United Community Services, or for spiritual aid from one of the religious denominations in the community.

After suit has been filed and personal service is obtained upon the other spouse who files an answer contesting the right to a divorce, the case being then contested is placed upon the pre-trial calendar for conference with one of the judges. If, as a result of the conference with the judge, the parties are able mutually to agree concerning their difficulties, an order is prepared by the judge setting up the understanding between the parties and the conditions essential for a definite adjustment of the marital difficulties, signed by both parties and approved by the conference judge. Of course, it must be realized that this so-called "order" has no legal effect or status but represents a voluntary statement in writing embodying the agreement of the parties. It does have a moral effect upon the husband and wife, each of whom receives a signed copy of said order for their guidance in the future. The original petition for the conference and the final order showing a successful reconciliation agreement are confidential and not subject to subsequent examination except by the parties or their attorneys.

On the other hand, if the judge was unsuccessful in persuading the parties to a voluntary adjustment of their marital difficulties after a full conference, the petition is marked "Reconciliation Not Effected" and placed in the closed confidential files of the court.

The same procedure as outlined above in the pre-suit conference is followed in the pre-trial reconciliation conference except that the latter is governed by Rule 16 of the Federal Rules of Civil Procedure. The pre-trial judge at this conference endeavors to bring about a reconciliation of the parties and a preservation of the marriage. He fully discusses with the parties and their counsel all phases of the marital difficulties with a view to achieving an adjustment thereof without further court procedure. If he is successful in obtaining the voluntary consent of the parties to try again, a reconciliation agreement is reduced to writing, signed by the parties and filed in the cause which is then marked "Settled and Dismissed Without Prejudice." On the other hand, if the parties are unwilling to resume their marital association, the judge then discusses the issues in the cause, attempts to get stipulations as to facts which are uncontroverted, marks the cause with the notation "Reconciliation Not Effected," ascertains the length of trial and prepares a pre-trial order governing the future conduct of the trial.

At this point, the case is ready for trial and will be placed on the calendar if the 90 days "cooling off" period has expired. Rule 9 of the Domestic Relations Branch provides for two trial calendars: For contested cases and for uncontested cases. Upon the filing of a written stipulation by the parties or their attorneys that a case at issue is "in fact uncontested," the clerk places the case on the uncontested calendar for prompt trial when a date is available in Domestic Relations Court No. 3.

There seems to be some confusion in the minds of practicing attorneys of the definition of the word "uncontested." Under Section 16-418 of the statute, it is provided that in all uncontested cases or in any other divorce or annulment cases where the court may deem it necessary or proper, a disinterested attorney shall be assigned by the court to enter his appearance for the defendant and actively defend the cause. The next section provides that no decree for divorce or annulment shall be rendered on default, without proof; nor shall any admission contained in the answer of the defendant be taken as proof of the facts charged as the ground of the application, but the same shall in all cases be proved by other evidence. In other words, the law requires that each case shall be proved by competent and substantial evidence and the attorney for each defendant shall actively defend him. This does not mean that the case is not in fact uncontested. Such cases are placed on the uncontested calendar and do not have to wait the 90-day cooling off period. But the stipulation that the case is uncontested in fact will not be accepted and should not be filed unless all issues in the case including the ground for divorce, question of custody and/or maintenance and support are in fact uncontested.

Many assigned counsel who have been unable to secure the cooperation of their clients apparently take the view that there is no obligation on their part actively to participate in the trial and seldom make any effort to cross examine the witnesses. This attitude is incorrect because the statute under which they were assigned specifically directs them to "actively defend" the case. As a result of this inactivity of assigned counsel, the burden falls upon the trial judge in many instances to ask questions for the purpose of verifying the residential requirements and the grounds for the divorce or annulment. In some cases, questioning by the Court brought out evidence demonstrating the suit in question was not within the jurisdiction of the new branch or which indicated that the basis for the divorce had not been established and resulted in the denial of the relief asked for. In connection with the assignment of disinterested attorneys as required by the Code in uncontested divorce cases, a master list containing the names and addresses of all attorneys (members of the bar of the Municipal Court for the District of Columbia) in alphabetical order is maintained in the office of the chief deputy clerk of the

branch. This list is compiled as a result of written indication by attorneys that they desire to be assigned in uncontested cases. In separate maintenance suits where only custody of childern and/or maintenance or support are sought and the defendant following proper service has failed to appear and answer, a written notice of default may be filed and the case set on the motions calendar for *ex parte* hearing. It should also be noted that in this class of cases, the court has provided, due to the current condition of the trial calendars, that no motions for temporary alimony and/or support or custody pendente lite shall be set for hearing but the cases shall be promptly put on the pre-trial calendar and thereafter scheduled for early hearing on the merits. In this way, the necessity for hearing the witnesses in the same matter first for determination of a temporary order and then for a final order is avoided, thereby expediting the disposition of these types of cases and also saving the time of the Court and trial counsel.

When a contested case is at issue but before it can be set on the trial calendar for hearing, the following conditions must be met:

(1) All necessary answers and replies have been filed and notice of any correspondent to appear and answer has been entered;
(2) A pre-trial reconciliation conference has been held; and
(3) Ninety days have elapsed from the time of filing the original complaint.

The last condition provides a "cooling off" period to permit the parties to have opportunity to change their minds since the filing of the complaint with its allegations and charges by the one spouse against the other. It has been observed that a number of cases have been dismissed during this 90-day period after the parties have had a chance to "cool off" and their tempers have subsided.

To date, under the above procedure there have been seven reconciliations effected as a result of pre-suit conferences. Only time will determine whether or not these reconciliations will last or if the parties will again seek severance of their marital ties. However, it is the firm intention of the three judges to continue their best efforts to bring about reconciliation in all contested cases that are filed in the new branch with the hope that their efforts will be of some avail in the preservation of some marriages. In this respect, it is hoped that the new branch has the full support of the community in achieving its objectives.

Since the branch opened for operation on September 17, 1956, there have been the following number of cases filed as of January 31, 1957:

Absolute Divorce	*Filed*	*Disposed of*	*Remaining*
Desertion	349	108	241
Five years voluntary separation	163	46	117

Adultery	46	6	40
Conviction of Felony	29	4	25
Limited Divorce	*Filed*	*Disposed of*	*Remaining*
Cruelty	144	23	121
Maintenance and Annulment cases	*Filed*	*Disposed of*	*Remaining*
	165	35	130
Adoptions	*Filed*	*Disposed of*	*Remaining*
Minors	163	62	101
Adults	4	4	0

As indicated above, the legal grounds for divorce in the District of Columbia are, upon a showing of *bona fide* residential requirements (and by "residence" is meant "domicile") and upon competent proof to support the same, are: (Absolute) Adultery, two years desertion, voluntary separation from bed and board for five years without cohabitation, and final conviction of a felony involving moral turpitude and sentence for at least two years to a penal institution which has been served in whole or in part. There are other grounds for annulling a marriage or declaring it void which are more fully set forth in Title 16-403 of the District of Columbia Code.

In the case of a *limited* divorce, it should be pointed out that although the statute only sets forth one specific ground, namely, "cruelty," a limited decree can also be issued for any of the four grounds for an absolute divorce. "Cruelty" is not limited to physical treatment which endangers life and limb but in the absence of physical violence, it is sufficient that the conduct creates a state of mind which operating upon the physical system produces bodily injury. Mere incompatibility is not cruelty. A limited divorce may be enlarged into an absolute divorce upon application by the innocent party if the parties continue to be separated for two years after the decree; and if the separation continues for five years, even the guilty party may apply for an absolute divorce.

Service of process for the Domestic Relations Branch is made by the United States Marshal for the District of Columbia or by any of his authorized assistants. In lieu of such personal service, the cases where the defendant cannot be found or is shown by affidavit to be a non-resident or to have been absent from the District of Columbia for at least six months, service of process can be had by publication. This type of substituted service can be used for all non-resident defendants or for resident defendants who have been absent from the District of Columbia for at least six months, such as persons in military service, on special assignment or incarcerated in institutions beyond the District of Columbia. The same Code provision allows personal service of process by a person not a party to the controversy on a *non-resident defendant* out of the District of Columbia which service shall have the same effect as an order of pub-

lication duly executed. The requirements for such substituted service are fully set forth in Section 13-108 aforesaid.

Title 13-107 provides:

> "If any person noncompos mentis be a party defendant in any suit at law, or in equity, process shall be served upon him, if within the District, and upon his committee, if there be one within the District, and if there be no such committee and the court shall be satisfied as to the condition of said party, it may appoint a guardian ad litem to answer and defend for him."

Under such section, if the person non compos mentis and his committee within the District be served with process and both do not answer, then the Court shall assign an attorney as provided in Section 16-418. However, if there be no such committee for a person non compos mentis in the District of Columbia, then the Court shall appoint a guardian ad litem to answer and defend for him.

The court has also provided by rule for the appointment of a guardian *ad litem* in all domestic relations cases not seeking a divorce or annulment but involving the custody and support of minor children in order to have an impartial investigation of the matter and to receive a report in writing. This procedure has been inaugurated to insure the adequate protection of minor children whose custody and support must be determined by the Court.

In order to further save time of the Court and to expedite the hearing of cases, it has been provided by rule that no motion, other pleading, deposition or written interrogatories shall be filed in a contested case *after* a pre-trial order has been entered by the Court except upon written approval of the pre-trial judge for good cause shown.

Another innovation that has been established by the Domestic Relations Branch is the provision by rule for the remission of all monies due under any order of this Court for maintenance, alimony, support and education to the Chief Deputy Clerk of the branch, if so ordered. All remittances so received are promptly transmitted to the person entitled thereto. The purpose of this procedure is to keep a careful record of all payments in cases where persons ordered to make such payments are frequently in default or notoriously delinquent in complying with orders for such payments and to be in position to take prompt and immediate action to correct the situation without any delay and thereby protect the interest of wives and minor children who are in need of prompt and regular payments for their support. The Court has ordered payments through the clerk's office in eleven (11) cases up to the time of this writing, and nine (9) are still paying in this manner.

In the meantime, although at no moment losing sight of its objective to reduce the number of broken families in this community by ear-

nest efforts to bring about reconciliations of the parents if only for the future security and welfare of the children involved in divorce actions, the Court is fully cognizant of its primary responsibility as a tribunal for the determination of domestic relations litigation and for the issuance of proper decrees and judgments under the law and upon the evidence.

In doing so, however, the Court will expect from litigants and their counsel of record full compliance with jurisdictional requirements and competent evidence to support basic allegations of their complaints. Both contested and uncontested cases must be proved. There can be no defaults in theory or in practice.

At present, the calendars of the Domestic Relations Branch are current and prompt disposition is being made of all matters at issue. Some lag may be anticipated in the pre-trial conferences because of the time needed to properly and fully discuss with litigants all phases of the problems in the hope that reconciliation might be effected. This is not time wasted in any respect—but time properly used in the earnest endeavor to achieve an important objective of the new branch.

It is hoped that as time passes and the public at large and the litigants in this particular field become better informed as to the importance of preserving and maintaining family unity as part of the strength of the republic, the Court will be able to report increasing success in reconciliations and decreasing number of decrees and judgments dissolving marriages.

In any event, the author is satisfied that pre-marital counseling is the better answer to the problem of unhappy marriages than pre-trial counseling. Counseling couples before marriage will prove a stronger factor in avoiding many unfortunate alliances between persons who are either hopelessly unsuited to each other or to participation in marriage. Post marital counseling at pre-trial frequently comes too late, and the only real answer is dissolution of the marriage ties already broken.

The Domestic Relations Branch is in full operation as the legally constituted court for domestic relations problems in the District of Columbia. It will not be a "divorce mill," but its three judges stand ready to offer their services to *bona fide* District residents, first, to use their best efforts to bring about reconciliations between the parties both in conference before suit and before final trial and, secondly, to grant appropriate judgments in all domestic relations matters upon the evidence and in accordance with the statutory law of this jurisdiction.