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## Don't Tread on Me to Help Me: Does the District of Columbia Family Court Act of 2001 Violate Due Process by Extolling the One Family, One Judge Theory

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# DON'T TREAD ON ME TO HELP ME: DOES THE DISTRICT OF COLUMBIA FAMILY COURT ACT OF 2001 VIOLATE DUE PROCESS BY EXTOLLING THE "ONE FAMILY, ONE JUDGE" THEORY?

*Jim Moye\**

*"I now know that making good decisions about families requires more than common sense; it requires a great deal of expert knowledge . . . . [F]rom my experience, I have come to the certain conclusion that a trained and experienced judge specializing in family law and presiding over a family law case from beginning to end can obtain a better outcome."<sup>1</sup>*

*"Unfortunately, a new court alone cannot provide a guarantee against another Brianna tragedy. People do bad things to people. What we can guarantee is that each child will get the attention that they deserve on the issues of safety and well-being as they go through our court."<sup>2</sup>*

**F**OSTER care—the federally-regulated, state-administered system carrying responsibility for abused, neglected, abandoned, orphaned or mentally-impaired children—is in turmoil. Examples of the troubled system can be found all over the United States. In the 1980s and 1990s, more than a dozen states' child welfare agencies were placed in federal receivership.<sup>3</sup> In Florida, thirty-seven children died of abuse or

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The ideas shared in this article do not reflect the position of the Child and Family Services Agency or the District of Columbia government.

1. *District of Columbia Family Court Act of 2001: Hearing on H.R. 2657 Before the Subcomm. on D.C. of the House Comm. on Gov't Reform*, 107th Cong. (2001) (statement of Scott McCown).

2. Sylvia Moreno, *Born of Tragedy, Family Court Begins to Grow Up; Tribunal Created After Toddler's Death Attracts Judges Devoted to Child Welfare*, WASH. POST, Sept. 26, 2002, at T08.

3. See Brian Bowling, *Effect of Comp Bankruptcy Unclear, If Legislation Fails, a Federal Trustee Could Operate Fund*, CHARLESTON GAZETTE AND DAILY MAIL (WV), Mar. 11, 2003, at C1.

neglect while under state care, even though workers were warned of dangers to the children.<sup>4</sup> The State of Michigan admitted that it lost track of over 300 children in its child welfare system.<sup>5</sup> In Georgia, the child welfare system has seen its share of troubles. According to published reports, hundreds of children died after coming into the state's foster care system.<sup>6</sup> An investigation by the Georgia Bureau of Investigations into the deaths of thirteen children in the state's care revealed that "the child welfare agency's sloppy work, bad decision(s) and widespread inefficiency contributed to 10 [sic] of those deaths."<sup>7</sup> In New Mexico, a volunteer board created by state legislation affirmed the fact that in the year 2000, children were forced to have lengthy custody stays and multiple placements, and were not receiving requisite mental health attention.<sup>8</sup> It was also revealed that thirty-one percent more foster children stayed in foster care five years or longer in 2000 than were in the system for the same length of time in 1997.<sup>9</sup>

Litigation was instituted in a few states to expose problems in the foster care system. In Tennessee, a child advocacy organization, in conjunction with several Tennessee law firms, sued the state child welfare authority claiming that "Tennessee's foster care system was 'grossly mismanaged and overburdened,' and that the agency had failed to ensure that the children were cared for properly."<sup>10</sup> The state settled the class action lawsuit by agreeing to a number of reforms and allowing court oversight.<sup>11</sup> A suit was filed in the state of Washington in 1999 on behalf of thirteen current and former foster children, alleging that the state had failed to provide stable homes, had subjected the children to multiple moves, and failed to protect those same children from neglect and abuse

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4. See *State Eye on Abused Kids*, Editorial, CHRISTIAN SCI. MONITOR, Jan. 16, 2003, at 8.

5. See *id.*

6. See Ron Martz, *Child Welfare Fixes Expected to be Costly, Rebuilding Crippled System Could Take Three Years, Says State's Human Resources Commissioner*, ATLANTA J. & ATLANTA CONST., July 20, 2000, at B1.

7. *Id.* The Human Resources Commissioner for the State of Georgia, Audrey Horne, whose department oversees the child welfare system, hypothesized it could take up to three years to begin fixing the system and would also cost \$20 million for fiscal year 2001 to start the reforms. *Id.*

8. See Deborah Davis, *Group Highlights Foster-Care Problems*, SANTA FE NEW MEXICAN, Jan. 20, 2002, at B1.

9. See *id.*

10. Emily Yellin, *Tennessee to Alter Foster Care*, NEWS & OBSERVER (Raleigh, NC), May 20, 2001, at A8. The suit also stated that many children had been moved ten or more times while in foster care and that there had been no concerted effort to find permanent homes for the children. See *id.* The suit pointed out that caseworker contact was a problem, and that these problems were more acute for African-American children. See *id.*; see generally Jamie Satterfield, *State Foster Care on Road to Reform, Settling Suit Improves Odds*, KNOXVILLE NEWS-SENTINEL, May 19, 2001, at A1.

11. See Yellin, *supra* note 10, at A8. Specifically, the state agreed to spend \$30 million dollars over the next five years to improve the system, to improve the training of its caseworkers, to limit the number of cases each caseworker handles to a maximum of twenty, to limit the number of children assigned to a foster home, to significantly increase the number of children adopted within the first year of eligibility, and to follow strict timelines written into the settlement. See *id.*

while under the state's care.<sup>12</sup> Almost two years later, the state settled the lawsuit.<sup>13</sup> Specifically, the state agreed to pay \$1.3 million in damages to the thirteen plaintiffs.<sup>14</sup> However, a separate class action suit grew out of the plaintiffs' original claim, which is still pending litigation.<sup>15</sup>

One child welfare system that has come under considerable criticism is in Washington, D.C. In 1989, the District of Columbia government was sued by child welfare advocates for failing to properly maintain its child welfare system.<sup>16</sup> The suit was ultimately successful, and in 1995 Judge Thomas Hogan, the presiding federal judge in the class action lawsuit, appointed Jerome Miller as the federal receiver for the child welfare system.<sup>17</sup> His term was less than successful as he was unable to make any effective changes in the system.<sup>18</sup>

Two years later, in 1997, Ernestine Jones was appointed to succeed Mr. Miller as the federal receiver.<sup>19</sup> Her term was equally difficult. First, by fiscal year 2000, the city's child welfare agency had a \$30 million deficit.<sup>20</sup> To make matters worse, Ms. Jones was cited for contempt and arrested by federal marshals for failing to attend a court hearing at the District of Columbia Superior Court.<sup>21</sup> After her arrest, Ms. Jones filed a federal lawsuit against the District of Columbia Superior Court, charging that she was not under the auspices of the District of Columbia Superior Court.<sup>22</sup> After terse negative public reaction to the lawsuit, Ms. Jones withdrew the suit.<sup>23</sup>

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12. See Ruth Teichrob, *State's Foster-Care System to Be Put on Trial, Suit Claims Children Abused by Many Moves*, SEATTLE POST-INTELLIGENCER, Oct. 20, 1999, at A1.

13. See Ruth Teichrob, *State to Pay Foster Kids \$1.3 Million; but Settlement Doesn't Meet Lawsuit's Goal of Reforming System, Attorney Says*, SEATTLE POST-INTELLIGENCER, Sept. 29, 2001, at B1.

14. See *id.* The settlement provides \$100,000 to each of the children named in the lawsuit. "The money will be placed in a trust fund until each individual is 30 years old, but a court-appointed trustee can release funds earlier for health care, shelter, clothing or education." See *id.*

15. See *id.*

16. See Jonetta Rose Barras, *Taking Back the City, Mayor Retrieves D.C. Agencies from Judges*, WASH. TIMES, Oct. 27, 2000, at A21.

17. See *id.*

18. See *id.*

19. See *id.*

20. See Jonetta Rose Barras, *Rewards for Failure, Agency Budget Grows while Youths Suffer*, WASH. TIMES, Sept. 15, 2000, at A23.

21. See *Don't Mess with Judge Christian*, Editorial, WASH. POST, Aug. 15, 2000, at A22. A neglect case involving an abandoned twenty-month old baby was before Superior Court Judge Kaye K. Christian. See *id.* Judge Christian believed that Child and Family Services was mishandling the case and summoned the social worker on the case, the social worker's supervisor, and Ms. Jones. See *id.* None of the parties attended the hearing. See *id.* A second summons was issued, and the social worker and supervisor attended, but not Ms. Jones. See *id.* Lawyers for Child and Family Services contended that Judge Christian did not have jurisdiction over Ms. Jones as federal receiver because she was appointed and overseen by a federal court. See *id.*

22. See Sari Horwitz & Scott Higham, *Child Welfare Chief Drops Lawsuit; Jones Targeted Local Judges*, WASH. POST, Aug. 24, 2000, at B1.

23. See *id.* "The chief of the District's child welfare agency has withdrawn her federal lawsuit against D.C. Superior Court, backing down from a tense confrontation with local

Subsequently, the case that brought the most negative attention to the District of Columbia child welfare system revolved around twenty-three-month-old Brianna Blackmond. During the 1999 Christmas holidays, Brianna was returned to the custody of her biological mother without a hearing.<sup>24</sup> Unfortunately, there were a number of miscommunications in the case.<sup>25</sup> The social worker on the case was not in favor of sending Brianna or her sister back home for the holidays, but there was no report in support of that opinion.<sup>26</sup> The lawyer representing the biological mother incorrectly informed the presiding judge that all parties were in agreement to return the children to the biological mother, who was cognitively limited, for the holidays.<sup>27</sup> The presiding judge did not hold a hearing on the matter but instead signed an order returning the children home.<sup>28</sup> Two weeks later, Brianna died at the hands of her godmother.<sup>29</sup> Brianna's godmother was charged with the murder, and Brianna's mother was charged as an accessory to the crime.<sup>30</sup>

After these and other incidents, Congress became intimately involved with reforming the child welfare system in the District of Columbia. Congress had already passed the Adoptions and Safe Families Act of 1997 to impose national child welfare reform.<sup>31</sup> In order to rectify what was seen as a deteriorating situation in the Washington, D.C. child welfare system, Congress specifically targeted the District of Columbia Superior Court and its Family Division to make sweeping changes. Congress used its power to pass the District of Columbia Family Court Act of 2001.<sup>32</sup> The legislation brought many changes to the District of Columbia Superior Court, including changing the name of the Family Division, regulating the number of judges in the Division, changing the qualifications needed to serve, and most importantly, implementing the "one family, one judge" model.<sup>33</sup> The "one family, one judge" model means that families with matters in the Family Court will have all matters consolidated before a single judge.<sup>34</sup> In theory, any legal issue that would normally be heard in the Family Court would still be heard in the Family Court, but would be heard by the same judge who has heard other Family Court matters related to the family.<sup>35</sup>

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judges and calling into question why she filed the unusual legal challenge in the first place." *Id.*

24. See Sari Horwitz, "Failure after Failure", *Foster System Betrayed Brianna*, WASH. POST, Feb. 21, 2000, at A1.

25. See *id.*

26. See *id.* See also *Children's Stories*, WASH. POST, Sept. 12, 2001, at B9.

27. See *id.* The biological mother has an Intelligence Quotient of 58 and had a history of child neglect.

28. See *id.*

29. See *id.*

30. See *id.*

31. Pub. L. No. 105-89, 111 Stat. 2115 (1997).

32. Pub. L. No. 107-114, 115 Stat. 2100 (2002).

33. See *id.*

34. See Cliff Collins, *Family Court, Oregon Style*, OREG. STATE BAR BULLETIN, Jan. 2001, at 13.

35. See *id.*

Some critics have charged that the “one family, one judge” model violates due process because judges may have access to information that would normally be inadmissible, and the entire social history of a family is brought to bear in a proceeding.<sup>36</sup> Theoretically, the best way to cure such inequities would be to force a judge to recuse himself from any further proceedings involving the family. Of course, this violates the spirit and intent of the “one family, one judge” philosophy. The “one family, one judge” model has yet to be challenged as a due process violation at the highest court of any state or the United States Supreme Court.

This Article explores the issues surrounding the District of Columbia Family Court Act of 2001 and specifically examines whether the “one family, one judge” methodology violates due process. Part I breaks down the District of Columbia Family Court Act of 2001. Part II looks at both United States Supreme Court and D.C. Court of Appeals cases with regard to due process and judicial recusal. Part III compares the jurisprudence against the District of Columbia Family Court Act of 2001 and determine whether due process is violated by “one family, one judge.” Part IV makes policy recommendations with regard to this issue and the District of Columbia Family Court Act of 2001. The Article ultimately concludes that the “one family, one judge” model introduced in the District of Columbia Family Court Act of 2001 does not violate due process and can be a useful tool in providing better family court service.

## I. JUDICIAL REFORM IN THE NATION'S CAPITAL: THE DISTRICT OF COLUMBIA FAMILY COURT ACT OF 2001

The District of Columbia Family Court Act of 2001 brought a number of changes to the Family Division of D.C. Superior Court. The first and most notable change was that the Family Division became known as the “Family Court.”<sup>37</sup> The first section sets out the requisite qualifications for judges, including issues related to the number of judges,<sup>38</sup> qualifications,<sup>39</sup> and tenure.<sup>40</sup>

Additionally, the legislation changes the position and title of Hearing Commissioners.<sup>41</sup> Their titles are changed to “Magistrate Judges,” and their role in the new Family Court is specifically defined.<sup>42</sup>

The most important change in the District of Columbia Family Court Act of 2001 is that all issues related to marriage and divorce, child custody, adoption proceedings, paternity proceedings, proceedings concerning children who are delinquent, neglected or in need of supervision,

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36. See Anne Geraghty & Wallace J. Mlyniec, *Unified Family Courts, Tempering Enthusiasm with Caution*, FAM. CT. REV., Oct. 2002, at 435.

37. Pub. L. No. 107-114 (2001), § 11-902(a).

38. See *id.* at § 11-908A.

39. See *id.*

40. See *id.*

41. See Pub. L. No. 11-1732.

42. See *id.*

commitment of the mentally ill, and proceedings under the Interstate Compact for the Placement of Children ("ICPC"), are to be under the jurisdiction of the Family Court.<sup>43</sup>

The new law also specifically provides that all family members with court proceedings have those cases heard by one judge,<sup>44</sup> any Family Court case would remain in the Family Court until the case is disposed of,<sup>45</sup> and if a party is assigned to a Family Court judge and has other actions, then those actions should be heard by the same judge.<sup>46</sup>

Clearly, this is a major philosophical change because it gives the Family Court *carte blanche* to consolidate one family's multiple matters into one docket under one judge. In a practical sense, a hypothetical scenario could look as follows: Family X has a pending divorce matter. In the midst of the divorce, a neglect case is opened against one of the parents. After the neglect case has been opened, one of the children in the family commits a crime and has a juvenile case brought before the court. Judge Y, who had original jurisdiction over the pending divorce case, would now also have jurisdiction over the neglect and juvenile cases. Under the old Family Division system, three different judges would have heard the three differing matters.

## II. A TOUGH QUESTION TO ANSWER: WHEN SHOULD A JUDGE RECUSE HIMSELF FROM A CASE?

The United States Supreme Court, the District of Columbia Court of Appeals, and the American Bar Association have all weighed in on the issue of judicial recusal. For purposes of the instant discussion, it is important to analyze each entity's position.

### A. UNITED STATES SUPREME COURT

It is well settled in Supreme Court case law that the Due Process Clauses of the Fifth and Fourteenth Amendments entitle defendants to a "neutral and detached judge."<sup>47</sup> The Supreme Court has stated that a fundamental requirement of due process is that a litigant is entitled to "[a] fair trial in a fair tribunal."<sup>48</sup> There are three major Supreme Court cases on the issue.

The first of these cases was *Tumey v. Ohio*.<sup>49</sup> In *Tumey*, a defendant was charged with possessing intoxicating liquor and was brought before the town mayor, who also served as the judge.<sup>50</sup> The defendant immediately moved to have the mayor disqualified as the trier of fact, but the

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43. See *id.*

44. See *id.*

45. See *id.*

46. See *id.*

47. See *Ward v. Village of Monroeville*, 409 U.S. 57, 61-62 (1972); see also *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980); *Tumey v. Ohio*, 273 U.S. 510, 523, 532-35 (1927).

48. See *In re Murchison*, 349 U.S. 133, 136 (1955).

49. 273 U.S. 510 (1927).

50. See *id.* at 515.

motion was denied.<sup>51</sup> The defendant proceeded to trial, where he was convicted, fined and imprisoned.<sup>52</sup> The case was heard by the Court of Common Pleas for Hamilton County, Ohio, where the defendant's conviction was overturned.<sup>53</sup> The case was appealed by the state to the court of appeals.<sup>54</sup> The court of appeals overturned the Court of Common Pleas and affirmed the judgment of the mayor.<sup>55</sup> The defendant attempted to have the case heard by the state supreme court, but was unsuccessful.<sup>56</sup>

The Supreme Court granted certiorari to hear the case. In a majority opinion written by Chief Justice Taft, the Court reversed the judgment and remanded the case.<sup>57</sup> Justice Taft wrote in the opinion that "it certainly violates the Fourteenth Amendment, and deprives a defendant in a criminal case of due process of law, to subject his liberty or property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case."<sup>58</sup>

The second important Supreme Court case was *Liljeberg v. Health Servs. Acquisition Corp.*<sup>59</sup> In *Liljeberg*, the case centered on a lawsuit brought by Health Services Acquisition Corporation against John Liljeberg, Jr.<sup>60</sup> The case was heard in federal district court by Judge Robert Collins.<sup>61</sup> The judge, sitting without a jury, ultimately ruled in favor of Liljeberg.<sup>62</sup> The decision was affirmed by the court of appeals.<sup>63</sup> Ten months after the court of appeals case, Health Services Acquisition Corporation acquired information that the original trial judge served on a board that had been negotiating with Liljeberg for the purchase of a tract of land.<sup>64</sup> Health Services Acquisition Corporation filed a motion to

51. *See id.* The defendant moved to have the mayor disqualified, because otherwise the defendant would suffer a violation of his Fourteenth Amendment rights. *See id.*

52. *See id.* The defendant was convicted of unlawfully possessing intoxicating liquors in Hamilton County, Ohio, fined \$100, and ordered imprisoned until he could pay the fines and fees. *See id.*

53. *See id.* The Court of Common Pleas found that the mayor should have been disqualified, thus overturning the conviction. *See id.*

54. *See id.* at 515.

55. *See id.*

56. *See id.* "On May 4, 1926, the State Supreme Court refused defendant's application to require the Court of Appeals to certify its record in the case. The defendant then filed a petition in error in that court as of right, asking that the judgment of the Mayor's Court and of the Appellate Court be reversed, on constitutional grounds. On May 11, 1926, the Supreme Court adjudged that the petition be dismissed for the reason that no debatable constitutional question was involved in the cause." *Id.*

57. *See id.* at 535.

58. *Id.* at 523.

59. 486 U.S. 847 (1988).

60. *See id.* at 850. Health Services Acquisition Corporation brought an action against Liljeberg for ownership of the St. Jude Hospital of Kenner, Louisiana. *See id.*

61. *See id.*

62. *See id.*

63. *See id.*

64. *See id.* Apparently, Judge Collins served on the Board of Trustees for Loyola University. *Id.* At the time the case came before Judge Collins, Loyola University had been in negotiations with Liljeberg over the purchase of a tract land for a hospital. *Id.*



have the trial judges decision overturned, which the same judge denied.<sup>65</sup> On appeal, the court of appeals reversed the decision and remanded the case back to a different trial judge.<sup>66</sup> On remand, the district court made specific factual findings, but once again denied Health Services Acquisition Corporation's motion.<sup>67</sup> Once again, the court of appeals reversed.<sup>68</sup>

The third and final case of importance was *Liteky v. United States*.<sup>69</sup> In *Liteky*, three defendants were on trial for various acts committed at Fort Benning Military Reservation.<sup>70</sup> Before their trial, the defendants filed a motion to have the judge disqualified under 28 U.S.C. § 455(a).<sup>71</sup> The

Additionally, these negotiations were publicized to the Board of Trustees and had been discussed at various meetings. *Id.*

65. *Id.* at 850-51. "Based on this information, respondent moved pursuant to Federal Rule of Civil Procedure 60(b)(6) to vacate the judgment on the ground that Judge Collins was disqualified under § 455(a) at the time he heard the action and entered judgment in favor of Liljeberg." *Id.*

66. *See id.* at 851. Specifically, the Court remanded the case so that a lower court could determine "factual findings concerning the extent and timing of Judge Collins' knowledge of Loyola's interest in the declaratory relief litigation." *Id.*

67. *See id.*

On remand, the District Court found that based on his attendance at Board meetings Judge Collins had actual knowledge of Loyola's interest in St. Jude in 1980 and 1981. The court further concluded, however, that Judge Collins had forgotten about Loyola's interest by the time the declaratory judgment suit came to trial in January 1982. On March 24, 1982, Judge Collins reviewed materials sent to him by the Board to prepare for an upcoming meeting. At that time—just a few days after he had filed his opinion finding for Liljeberg and still within the 10-day period allowed for filing a motion for a new trial—Judge Collins once again obtained actual knowledge of Loyola's interest in St. Jude. Finally, the District Court found that although Judge Collins thus lacked actual knowledge during trial and prior to the filing of his opinion, the evidence nonetheless gave rise to an appearance of impropriety. However, reading the Court of Appeals' mandate as limited to the issue of actual knowledge, the District Court concluded that it was compelled to deny respondent's Rule 60(b) motion.

*Id.*

68. *See Liljeberg*, 486 U.S. at 851. The court of appeals observed that Judge Collins should have recused himself immediately upon having his memory refreshed, and that he should have remembered the Liljeberg/St. Jude conversation. *See id.*

69. 510 U.S. 540 (1994).

70. *Id.* at 542. The defendants were indicted for allegedly violating 18 U.S.C. § 1361, which in relevant part reads:

Whoever willfully injures or commits any depredation against any property of the United States, or of any department or agency thereof, or any property which has been or is being manufactured or constructed for the United States, or any department or agency thereof, or attempts to commit any of the foregoing offenses, shall be punished as follows: If the damage or attempted damage to such property exceeds the sum of \$1,000, by a fine under this title or imprisonment for not more than ten years, or both; if the damage or attempted damage to such property does not exceed the sum of \$1,000, by a fine under this title or by imprisonment for not more than one year, or both.

18 U.S.C. § 1361 (West 2004).

The defendants were indicted for allegedly committing vandalism and, *inter alia*, spilling human blood on the walls of the military reservation. *Liteky*, 510 U.S. at 542.

71. *Liteky*, 510 U.S. at 542. The law reads, in relevant part, that:

(a) Any justice, judge, or magistrate [magistrate judge] of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

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- (b) He shall also disqualify himself in the following circumstances:
- (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
  - (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
  - (3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;
  - (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
  - (5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
    - (i) Is a party to the proceeding, or an officer, director, or trustee of a party;
    - (ii) Is acting as a lawyer in the proceeding;
    - (iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
    - (iv) Is to the judge's knowledge likely to be a material witness in the proceeding.
- (c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.
- (d) For the purposes of this section the following words or phrases shall have the meaning indicated:
- (1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;
  - (2) the degree of relationship is calculated according to the civil law system;
  - (3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
  - (4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:
    - (i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;
    - (ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
    - (iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
    - (iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.
- (e) No justice, judge, or magistrate [magistrate judge] shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.
- (f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate [magistrate judge], or bankruptcy judge to whom a matter

defendants moved to have the judge disqualified because the same trial judge convicted one of the defendants of various misdemeanors committed during political protests at the same military base.<sup>72</sup> The defendants argued that the judge's behavior during the previous trial made his recusal necessary.<sup>73</sup> The judge denied the defendants' motion and proceeded with the trial.<sup>74</sup> After the court refused to allow the defense to discuss certain topics and issues in its opening statement, the defendants renewed their motion for judicial disqualification.<sup>75</sup> The motion was again denied, and eventually, the defendants were convicted of the charges.<sup>76</sup> On appeal to the United States Court of Appeals for the Eleventh Circuit, that court affirmed the trial court's rulings.<sup>77</sup> The Supreme Court granted certiorari.<sup>78</sup>

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has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate [magistrate judge], bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

28 U.S.C. § 455(a) (West 2004).

72. *Liteky*, 510 U.S. at 542.

73. *See id.* at 542-43.

Petitioners claimed that recusal was required in the present case because the judge had displayed "impatience, disregard for the defense and animosity" toward Bourgeois, Bourgeois' codefendants, and their beliefs. The alleged evidence of that included the following words and acts by the judge: stating at the outset of the trial that its purpose was to try a criminal case and not to provide a political forum; observing after Bourgeois' opening statement (which described the purpose of his protest) that the statement ought to have been directed toward the anticipated evidentiary showing; limiting defense counsel's cross-examination; questioning witnesses; periodically cautioning defense counsel to confine his questions to issues material to trial; similarly admonishing witnesses to keep answers responsive to actual questions directed to material issues; admonishing Bourgeois that closing argument was not a time for "making a speech" in a "political forum"; and giving Bourgeois what petitioners considered to be an excessive sentence. The final asserted ground for disqualification—and the one that counsel for petitioners described at oral argument as the most serious—was the judge's interruption of the closing argument of one of Bourgeois' codefendants, instructing him to cease the introduction of new facts, and to restrict himself to discussion of evidence already presented.

*Id.*

74. *Id.* at 543.

75. *Id.* Before the trial, defense counsel informed the court that he intended to focus his arguments on certain political events ongoing in El Salvador. *Id.* The judge informed defense counsel that he would allow him to state the defendants' political purposes in the opening statement. *Id.* During opening arguments, defense counsel began to discuss certain political events in El Salvador. The judge stated that he would not allow a discussion of the events in El Salvador and instructed defense counsel to discuss only those issues related to the evidence. *Id.*

76. *Id.*

77. *Id.* The Eleventh Circuit found that "matters arising out of the course of judicial proceedings are not a proper basis for recusal." *Id.*

78. *Id.*

The Court, in an opinion written by Justice Scalia, affirmed the convictions and, in doing so, made several important rulings.<sup>79</sup> The Court found that neither judicial rulings alone<sup>80</sup> nor opinions formed by judges based on facts introduced in the normal course of proceedings constitute the basis for bias or partiality.<sup>81</sup>

#### B. D.C. COURT OF APPEALS

The controlling case in the District of Columbia on the issue of judicial recusal can be found in *Scott v. United States*.<sup>82</sup> *Scott* revolved around a criminal defendant whose case had been assigned to a District of Columbia Superior Court trial judge.<sup>83</sup> Criminal violations of the District of Columbia Code are tried by the United States Attorney for the District of Columbia, a subsidiary of the United States Department of Justice.<sup>84</sup> During the criminal defendant's trial and sentencing,<sup>85</sup> the trial judge had been engaged in negotiations with the United States Department of Justice for a position.<sup>86</sup> At no time during the trial or sentencing did the trial judge disclose to the parties that he was in such employment negotiations.<sup>87</sup> Two weeks after being sentenced by the trial judge, the defendant learned of the judge's employment negotiations in a local D.C. newspaper.<sup>88</sup> Counsel for the defendant filed a motion to vacate the conviction and sentence, pursuant to D.C. Code § 23-110,<sup>89</sup> arguing that the

79. *Id.* at 544-56.

80. *Id.* at 555. "First, judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Id.*

81. *Id.* "Second, opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.*

82. 559 A.2d 745 (D.C. 1988).

83. *Id.* at 747. The matter was assigned to Judge Tim C. Murphy on November 15, 1984. *Id.*

84. *See id.* Pursuant to D.C. Code 23-101(c): "(c) All other criminal prosecutions shall be conducted in the name of the United States by the United States attorney for the District of Columbia or his assistants, except as otherwise provided by law." D.C. CODE ANN. § 23-101(c) (1981).

85. *Scott*, 559 A.2d at 747. The jury found the defendant guilty of assault with an intent to kill, and the judge sentenced the defendant to imprisonment for twelve to thirty-six years and fined him \$500. *Id.*

86. *Id.* "During *Scott*'s trial and sentencing, Judge Murphy was engaged in discussions with the United States Department of Justice about employment as an attorney in the Executive Office for United States Attorneys." *Id.* Judge Murphy was ultimately offered a job with the Justice Department on February 6, 1985, and resigned his position as a sitting Associate Judge in the D.C. Superior Court on February 8, 1985. *Id.*

87. *Id.* at 747-48.

88. *Id.* at 748.

89. *Id.* D.C. Code § 23-110, in relevant part, reads:

- (a) A prisoner in custody under sentence of the Superior Court claiming the right to be released upon the ground that (1) the sentence was imposed in violation of the Constitution of the United States or the laws of the District of Columbia, (2) the court was without jurisdiction to impose the sentence, (3) the sentence was in excess of the maximum authorized by law, (4) the sentence is otherwise subject to collateral attack, may move the court to vacate, set aside, or correct the sentence.

judge's failure to disclose such negotiations violated American Bar Association standards and denied the defendant due process of law.<sup>90</sup> The motion, heard by another trial judge, was denied.<sup>91</sup>

The D.C. Court of Appeals, sitting *en banc*, reversed the trial court's judgment and remanded the case for a new trial.<sup>92</sup> The court made two distinctive rulings on the issue of judicial recusal: 1) the American Bar Association's Code of Judicial Conduct applies to judges of the District of Columbia Superior Court and the District of Columbia Court of Appeals, and 2) a judge should disqualify himself even if there is the mere appearance of impropriety.<sup>93</sup>

### C. AMERICAN BAR ASSOCIATION

Finally, the American Bar Association Code of Judicial Conduct speaks to the issue of judicial recusal. The Judicial Code of Conduct for the District of Columbia Courts mirrors the ABA's judicial conduct code.<sup>94</sup> Under Canon 3(c) of the ABA Code of Judicial Conduct, a jurist "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."<sup>95</sup> Additionally, the ABA code also points at a number of other instances, albeit not inclusively, when a judge should recuse himself. Those instances include: (1) where the judge has a personal bias or prejudice against a party or has personal knowledge of contested evidentiary facts; (2) where the judge served as counsel or his firm served as counsel on the controversy; (3) where the judge served as a governmental lawyer and advised on the case in controversy; (4) where the judge, the judge's spouse, or minor child has a financial interest in the outcome of the interest; or (5) where the judge, the judge's spouse, or a person related to either within the third degree is or has consulted on the matter in controversy.<sup>96</sup>

D.C. CODE ANN. § 23-110(a) (1981).

90. *Scott*, 559 A.2d at 748.

91. *Id.* "The motion was denied by Judge Reggie Walton, citing *Womack v. United States*, 129 U.S. App. D.C. 407, 395 F.2d 630 (1968), on the ground that it would be inappropriate and unnecessary to resolve Scott's claim since a direct appeal was pending and Scott could raise the issue of judicial disqualification in his appeal from the denial of his motion." *Id.*

92. *Id.* at 746, 756.

93. *See id.* at 748-49.

"A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned." The necessity for recusal in a case is premised on an objective standard. . . . [A] judge must recuse from any case in which there is "an appearance of bias or prejudice sufficient to permit the average citizen reasonably to question [the] judge's impartiality." The objective standard is required in the interests of ensuring justice in the individual case and maintaining public confidence in the integrity of the judicial process which "depends on a belief in the impersonality of judicial decision making." Neither bias in fact nor actual impropriety is required to violate the rule.

*Id.* (emphasis omitted) (citations omitted).

94. *See generally* CODE OF JUDICIAL CONDUCT FOR THE DISTRICT OF COLUMBIA COURTS, Preface at v (1995).

95. *See* ABA CODE OF JUDICIAL CONDUCT Canon 3(c)(1) (1991).

96. *See id.*

### III. WHEN DUE PROCESS MEETS JUDICIAL REFORM: DOES THE DISTRICT OF COLUMBIA FAMILY COURT ACT OF 2001 VIOLATE DUE PROCESS WITH ITS "ONE FAMILY, ONE JUDGE" METHODOLOGY?

The central question at issue is whether the "one family, one judge" doctrine of the District of Columbia Family Court Act of 2001 creates due process concerns by requiring that one judge hear all of the legal matters involving one family. As discussed earlier, constitutionally, every individual has a right to a "fair and impartial" judge.<sup>97</sup> Critics of the "one family, one judge" doctrine utilized in the District of Columbia Family Court Act argue that questions of fairness and impartiality are non-existent because the judge would have knowledge of a family and draw inferences from that knowledge which may directly affect his or her ability to fairly adjudicate a matter. This rationale is flawed for a number of reasons.

#### A. THE DISTRICT OF COLUMBIA FAMILY COURT ACT OF 2001 CREATES A LEGAL EXCEPTION

First, the District of Columbia Family Court Act of 2001 provides a legal loophole to protect due process and other constitutional concerns. In the legislation, the "one family, one judge" doctrine is utilized only if it is legal and feasible.<sup>98</sup> The law contemplates legal problems that may arise from consolidating numerous cases into one case being heard before one judge. The legal checks and balance, in essence, is that judges are freed from consolidating cases if they believe it is not legal, practical, or feasible. Thus, because judges are not required to consolidate cases under the "one family, one judge" rubric, the law violates no existing law, especially not due process.

#### B. PREVIOUS ADVERSE DECISIONS ALONE ARE NOT A BASIS FOR JUDICIAL DISQUALIFICATION

One reason that the "one family, one judge" model has been criticized is a fear that if a judge makes an adverse ruling against family members, the judge will consider the evidentiary basis in future matters. Thus the family will be denied fairness and impartiality on unrelated matters.

The Supreme Court's decision in *Liteky* directly dealt with that rationale. As noted above, *Liteky* involved a criminal defendant who sought

97. See *Ward v. Village of Monroe*, 409 U.S. 57, 61-62 (1972).

98. District of Columbia Family Court Act of 2001, Pub. L. No. 107-114, sec. 4, § 101, 115 Stat. 2100, 2108 (2002) (to be codified at D.C. CODE ANN. § 11-104). The legislation reads:

To the greatest extent practicable, feasible, and lawful, if an individual who is a party to an action or proceeding assigned to the Family Court has an immediate family or household member who is a party to another action or proceeding assigned to the Family Court, the individual's action or proceeding shall be assigned to the same judge or magistrate judge to whom the immediate family member's action or proceeding is assigned.

*Id.*

removal of a trial judge because the judge had served as his trial judge in a previously-decided matter.<sup>99</sup> In the Court's opinion, Justice Scalia noted that "[t]he judge who presides at a trial may, upon completion of the evidence, be exceedingly ill-disposed towards the defendant, who has been shown to be a thoroughly reprehensible person."<sup>100</sup> Justice Scalia continued "[b]ut the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings, and are indeed sometimes (as in a bench trial) necessary to completion of the judge's task."<sup>101</sup>

In the instant situation, District of Columbia family court judges are exposed to positive, as well as negative, information about families. Such exposure does not necessarily mean that the court will be biased against the family. Just as in any other court, family court judges are required to make findings on the record before any major decision can be entered. The appeals process provides the safeguard against what a family may perceive to be bias from a judge from previous proceedings. A hypothetical situation may best illustrate this. Family X consists of a father, a mother, a daughter, and a son. Imagine that Family X has two pending matters before a District of Columbia Family Court judge: a domestic relations case and an abuse/neglect case. In the domestic relations case, there is a pending divorce in which violence between the parents has become a central issue. In the abuse/neglect case, the violent relationship between the parents is affecting the placement of the children. Before the court enters any findings in the domestic relations case, a reasoned, rational, statutory basis must exist for the court to issue any ruling. In the abuse/neglect context, the court is required to ensure the safety of a child under its jurisdiction.<sup>102</sup> Yet again, before the court can make any decision on placement of the children, it must make comprehensive findings of fact on the record. If the court's basis for those findings are lacking, the offended parent is always free to appeal the judge's decision. If the court's rationales for its decisions are solid, then it would withstand appellate scrutiny. Whatever the case, the court has to make a record and has to adequately support its decision, regardless of the information it has been exposed to with regard to the family. Hence, the family is left with adequate protection from bias.

Another flaw with the stated criticism of the "one family, one judge" doctrine is the assumption that an adverse decision against a party creates a bias against the affected party. The problem with that form of reasoning is that favorable decisions would also seemingly create bias in favor of the affected party. If a judge has made favorable ruling after favorable ruling, is it then fair to assume that the court has biased itself? The rational answer is no. Critics seemingly ignore the fact that bias and

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99. See *Liteky*, 510 U.S. at 542-43.

100. *Id.* at 550-51.

101. *Id.* at 551.

102. See generally Adoptions and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997).

prejudice do not just exist against a party but also can work for a party. In reality, in order to establish that a court is biased or prejudiced based on prior adverse rulings, a pattern of sustained, adverse rulings lacking any foundation in the law must exist. Only then could a reviewing court make the determination that a family court judge is biased based on prior adverse decisions.

### C. IS THE “MERE APPEARANCE OF IMPROPRIETY” DOCTRINE TRIGGERED BY THE “ONE FAMILY, ONE JUDGE” METHODOLOGY?

Under the traditional notions of legal ethics, if there is the “mere appearance of impropriety,” the person in question should recuse himself or herself from participation in the legal matter.<sup>103</sup> One may be tempted to argue that the “one family, one judge” philosophy in the District of Columbia Family Court Act of 2001 triggers the mere appearance of impropriety because a judge has unfettered access to information about the family. However, that need not be the case.

On a basic level, the underlying belief of the “mere appearance of impropriety” philosophy is that some form of unethical conduct *may* be occurring. Logically, as applied to the instant matter, there is some basis for the judge to be recused. As discussed above, a prior adverse ruling by a judge does not provide an adequate basis for recusal.<sup>104</sup> Thus, evidence would have to show that the judge had a personal, pecuniary, professional, or other interest.<sup>105</sup> If such evidence could be obtained, there seemingly would be no need to analyze the merits of any decision rendered by the court, because the court should have been recused before rendering the decision. Thus, if a party could not provide such evidence, recusal would not be a viable option solely because of the “one family, one judge” methodology utilized in the District of Columbia Family Court Act of 2001.

## IV. POLICY RECOMMENDATIONS FOR THE DISTRICT OF COLUMBIA FAMILY COURT ACT OF 2001

Even though the “one family, one judge” doctrine serves not to violate due process on its face, a number of policy alternatives could strengthen the District of Columbia Family Court Act. Five different policy initiatives could make a significant difference in the administration of the controversial doctrine.

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103. See generally *Scott v. United States*, 559 A.2d 745 (D.C. 1988).

104. See generally *Liteky v. United States*, 510 U.S. 540 (1994).

105. See generally CODE OF JUDICIAL CONDUCT FOR THE DISTRICT OF COLUMBIA COURTS, Preface at v (1995).



## A. CODIFY JUDICIAL RECUSAL RULES

As stated earlier, the Code of Judicial Conduct for District of Columbia Courts mirrors the American Bar Association's Code of Judicial Conduct. As thorough as that may be, a more proactive and progressive answer lies in codifying judicial recusal rules. The only District of Columbia rule on the books for determining judicial recusal lies in the D.C. Superior Court Rules of Civil Procedure. D.C. Superior Court Civil Procedure Rule 63-I states:

Whenever a party to any proceeding makes and files a sufficient affidavit that the judge before whom the matter is to be heard has a personal bias or prejudice either against the party or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned, in accordance with Rule 40-I(b), to hear such proceeding.<sup>106</sup>

The language of the civil procedure rule is very vague and lends itself to vastly different interpretations. A clearly defined statute would better serve the Family Court. A good example of this is found in the federal judiciary. Title 28 U.S.C. § 455 is the federal statute which clearly outlines the basis for judicial recusal.<sup>107</sup> Several jurisdictions, such as Alabama,<sup>108</sup> Florida,<sup>109</sup> and Ha-

106. D.C. SUPER. CT. R. CIV. P. 63-I.

107. *See supra* note 65.

108. *See generally* ALA. CODE § 12-1-12 (2004). The statute, while short, is quite clear: No judge of any court shall sit in any case or proceeding in which he is interested or related to any party within the fourth degree of consanguinity or affinity or in which he has been of counsel or in which is called in question the validity of any judgment or judicial proceeding in which he was of counsel or the validity or construction of any instrument or paper prepared or signed by him as counsel or attorney, without the consent of the parties entered of record or put in writing if the court is not of record.

*Id.*

109. *See generally* FLA. STAT. ANN. § 38.02 (West 2004). The statute reads:

In any cause in any of the courts of this state any party to said cause, or any person or corporation interested in the subject matter of such litigation, may at any time before final judgment, if the case be one at law, and at any time before final decree, if the case be one in chancery, show by a suggestion filed in the cause that the judge before whom the cause is pending, or some person related to said judge by consanguinity or affinity within the third degree, is a party thereto, or is interested in the result thereof, or that said judge is related to an attorney or counselor of record in said cause by consanguinity or affinity within the third degree, or that said judge is a material witness for or against one of the parties to said cause, but such an order shall not be subject to collateral attack. Such suggestions shall be filed in the cause within 30 days after the party filing the suggestion, or the party's attorney, or attorneys, of record, or either of them, learned of such disqualification, otherwise the ground, or grounds, of disqualification shall be taken and considered as waived. If the truth of any suggestion appear from the record in said cause, the said judge shall forthwith enter an order reciting the filing of the suggestion, the grounds of his or her disqualification, and declaring himself or herself to be disqualified in said cause. If the truth of any such suggestion does not appear from the record in said cause, the judge may by order entered therein require the filing in the cause of affidavits touching the truth or falsity of such suggestion. If the judge finds that the suggestion is true, he or

waii<sup>110</sup> provide good examples of solid state statutory rules regarding judicial recusal. Given the highly contentious nature of cases coming before the Family Court (such as divorce, child support, abuse, and neglect) it is in the best interest of the court to have clearly defined language on this issue.

## B. FAST TRACK APPEALS FOR JUDICIAL RECUSAL ISSUES

As a way of insuring fair treatment of every recusal motion filed in the Family Court, a fast track appeals process could be developed. If a party files a motion to have a judge recused because of suspected bias or partiality, the presiding judge of the Family Court would automatically hear the matter. This way, an impartial party handles the matter and is in an administrative position to weigh the evidence without any question of partiality. Rationally, this is the most logical way to handle a judicial recusal motion because it does not force the judge against whom the motion is directed to be put in the awkward position of ruling on his or her own ability to hear a case. Instead, it gives the judicial officer with the greatest administrative authority in the Family Court the ability to fairly, and impartially, hear all arguments without the appearance of partiality.

## C. RANDOM CONFLICTS AUDITS

Another useful tool to quell any possible conflicts may be for the Family Court to conduct random conflict of interest audits. Specifically, the court could use existing administrative personnel or judges outside of the Family Court to conduct random audits and determine whether, on its face, there are any possible conflicts. This is a progressive approach to the issue. Indeed, such an aggressive approach is necessary because the judiciary holds a place of public trust and has an ongoing duty to further public confidence. Such a duty places the court in the unenviable position of "outside the box" thinking, but such thinking is necessary given

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she shall forthwith enter an order reciting the ground of his or her disqualification and declaring himself or herself disqualified in the cause; if the judge finds that the suggestion is false, he or she shall forthwith enter the order so reciting and declaring himself or herself to be qualified in the cause. Any such order declaring a judge to be disqualified shall not be subject to collateral attack nor shall it be subject to review. Any such order declaring a judge qualified shall not be subject to collateral attack but shall be subject to review by the court having appellate jurisdiction of the cause in connection with which the order was entered.

*Id.*

110. See generally HAW. REV. STAT. § 601-7 (2003). The statute, *inter alia*, states: No person shall sit as a judge in any case in which the judge's relative by affinity or consanguinity within the third degree is counsel, or interested either as a plaintiff or defendant, or in the issue of which the judge has, either directly or through such relative, any pecuniary interest; nor shall any person sit as a judge in any case in which the judge has been of counsel or on an appeal from any decision or judgment rendered by the judge.

*Id.*

the slim constitutional dangers that accompany the “one family, one judge” doctrine.

Also, given that many of the judges practiced before the Family Division before joining the judiciary, conflicts may arise of which they are not aware. Random audits of court files would help to detect such conflicts before one rose to the level of a litigation issue. Random audits would also relieve the trial judge of being placed in an awkward position. In essence, because of the court’s public duty, the constitutional issues surrounding the “one family, one judge” doctrine, and the real possibility for conflicts, the random audit system could be a useful tool.

#### D. JUDICIAL DISCRETION NOT TO EXERCISE THE “ONE FAMILY, ONE JUDGE” DOCTRINE

A fourth possible policy shift would be encouraging judges not to utilize the “one family, one judge” methodology if it in any way stands to retard the progress of the family or any individual cases that may be before the court. As discussed earlier, judges under the District of Columbia Family Court Act of 2001 are given discretion to not consolidate cases under the “one family, one judge” methodology.<sup>111</sup> For instance, if a judge is not familiar with a certain area of the law such as child support, rather than consolidating all of the family’s cases into the child support action, the family is probably better off allowing another judge to hear the action. Even though the basis of “one family, one judge” is to ensure that families have consistency by utilizing one judicial officer, families should not be forced to sacrifice expertise for the mere sake of judicial consistency. Additionally, not utilizing “one family, one judge” may make it easier for the presiding judge over a family to handle other issues facing a family. For instance, because there is unlimited power to consolidate cases, a legitimate possibility exists that an unduly burdensome number of cases could be brought before one judge. In the District of Columbia Superior Court Family Court, multi-child families are not at all uncommon. With a large family, the judge may legitimately have domestic relations, juvenile, abuse and neglect, and child support issues. Having one judge address such a large number of issues at one time could be disadvantageous for the family, because the court may fail to properly consider each case and give it the time that it deserves. As judicially efficient as “one family, one judge” may be, there is only so much time a single judge can allot to one family. If there are multiple cases, the judge has to balance and prioritize those cases, which may serve as an injustice to other issues for the family in question.

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111. See generally District of Columbia Family Court Act of 2001, Pub. L. No. 107-114, 115 Stat. 2100.

## V. CONCLUSION

The District of Columbia Family Act of 2001 made substantial changes to the Family Division of the District of Columbia Superior Court. Most importantly, the law brought the “one family, one judge” methodology to the court. The greatest concern related to the law is whether the “one family, one judge” methodology violates the due process of those families standing before the court. The law does not violate due process because the legislation does not absolutely require that the “one family, one judge” methodology be used. The concern over previous adverse decisions by the court does not provide a basis for judicial bias and thus recusal, and the appearance of impropriety argument fails because evidence of pecuniary, personal, or professional interests must exist. The District of Columbia Family Court Act of 2001 is far from perfect and the “one family, one judge” methodology is not without its flaws. However, the law does not violate the due process of families with cases before Family Court judges. The law brings a new legal era to the District of Columbia and more importantly, brings new hope to a much beleaguered area of the law.



# Essay

