

A History of Michigan's Family Court

By Scott Bassett

We stand on the shoulders of those who came before us. In the effort to create a family court for Michigan, I stood on the shoulders of the diminutive Maxine Boord Virtue (as ridiculous as the mental image may be). Maxine was born in Omaha, Nebraska, in 1909. After graduating from Yale Law School in 1935, she worked in various government jobs, largely because the world of private law practice in that less-enlightened era was not open to women.

Maxine ended up in Ann Arbor, first as a research associate at the University of Michigan and later as a lecturer in law and sociology. She finally landed a spot in private practice in 1954 at Miller, Canfield, Paddock, and Stone, but not for long. She was at the Michigan Attorney General's office in various capacities from 1955 until 1973, after which she returned to private practice in Ann Arbor for the balance of her career.

Maxine was the second chairperson of the State Bar of Michigan Family Law Section after it was created from what had been the Domestic Relations Law Committee. One of my mentors and former employers, Hanley M. Gurwin, was the section's first chair.

In both government service and private practice, Maxine studied how courts handle family law cases. In 1956, she published a book called *Family Cases in Court*.¹ She lamented the improper treatment of these important cases in the general court system. She advocated for specialized training of judges hearing these cases and wanted more judges assigned to the family law docket. She was not yet ready, however, to endorse a separate family court or family division.

In 1958, as Michigan's Judicial Conference and the State Bar were considering the concept of a family court for Michigan, Maxine authored an article for the *Michigan State Bar Journal*.² The article cited the lack of facilities and resources devoted to family cases and the separation of jurisdiction of family matters between circuit and juvenile courts as the primary failings of the Michigan court system at the time. Those were still problems when I started practicing law 23 years later.

In the 1958 article, Maxine advocated for creating a specialized division of the circuit court that would have jurisdiction over all family-related issues. Although the phrase was not used, it was an early articulation of the concept of "one family, one judge" that served as the foundation of what was eventually adopted as the family division of the circuit court.

Maxine believed that having highly trained and skilled judges who specialized in hearing and deciding family issues would be a significant advantage. She wanted the family division to be part of the circuit court because in 1958, many probate judges were still part-time and many were not lawyers. Maxine recognized that family law cases presented real legal issues that could only be resolved using skills possessed by trained lawyers. She also hoped that the more therapeutic approach used in juvenile cases of that era could be applied to divorce and other domestic relations disputes to promote the welfare of children and their parents after the breakup of a marriage.

After graduating from the University of Michigan Law School in 1981, I began practicing with a 25-lawyer firm in Southfield—Hyman, Gurwin, Nachman, Friedman & Winkelman. I was assigned primarily to handle family law cases under the supervision of Edward D. Gold. That year, Ed was starting his term as chair of the SBM Family Law Section. I also worked with former chairperson Hanley Gurwin and the firm's senior partner, J. Leonard Hyman.

Practicing in Detroit—one of the metropolitan areas Maxine studied in her 1950s research on family law cases in the courts—I soon recognized the same flaws she observed decades earlier. Many circuit judges had little interest in, or patience for, family law matters. We would show up to court



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multiple times in a case only to be turned away without decisions or even appearing on the record. It seemed everything else was a higher priority for many judges. There was also the problem of divided jurisdiction. If a family with a divorce case in circuit court also had a neglect case in juvenile court or a guardianship matter in probate court, what would result if the judges involved didn't agree on a plan for the children? It was a mess.

In 1984, I left private practice and returned to the University of Michigan to teach at the law school. In my new role, I was also a supervising attorney in the Child Advocacy Law Clinic founded by Prof. Donald Duquette. The clinic gave second- and third-year law students a chance to handle neglect cases in several counties under faculty supervision. In those cases, we saw the problems related to the jurisdictional split between juvenile and circuit courts. Many of our neglect cases also involved pending or post-judgment divorce or paternity matters in circuit court.

While I was teaching at Michigan, probably around 1985, state Rep. Ethel Terrell introduced legislation to create a family division of Michigan's circuit court. Given the subject matter, it was a long and complex proposal and the legislation went nowhere.

Before the proposal died, I received a copy of the bill and went through it to see how it meshed with a research project I was working on with one of my law students, Margo Poznanski. As a newly elected member of the SBM Family Law Section Council, I dusted off Maxine's research and proposed that the section adopt a position favoring a family court with these characteristics:

- Structure: An autonomous family division of the circuit court
- Bench: A permanent (nonrotating) bench elected on ballot separate from judges of other courts

- Powers: Both statutory and equitable
- Level: Circuit-court level with direct appeal by right to the Court of Appeals
- Jurisdiction: Marriage, annulment, separate maintenance, divorce, custody, support, visitation, paternity, delinquency, child abuse and neglect, guardianship of minors, and adoption

The proposal was adopted. Then, perhaps working backward, Poznanski and I undertook research to survey the existing family courts that satisfied this model. We wanted to find out what was working and what was not. We looked at the family courts in Delaware, New Jersey, Rhode Island, and South Carolina.

The most striking result was that although bringing all family law cases together before a single judge—the “one family, one judge” concept—was important, the most essential structural characteristic leading to high rates of satisfaction with the family court was having a well-trained, dedicated, and *nonrotating* family court bench. Of the states surveyed, only New Jersey had a rotating bench. Perceptions of judicial quality were lowest there. We wrote a *Michigan Bar Journal* article summarizing our research.³

After the research was completed but before the article was published, I met with then SBM president George T. Roumel, who became a strong supporter of the family court movement, bucking the rest of the Bar leadership opposed to a specialized family court. Roumel advocated for creating a family court in Michigan in his June 1986 President's Page in the *Michigan Bar Journal*.⁴

What became the current family division of the circuit court in Michigan officially began in November 1995 as House Joint Resolution S introduced by state Rep. (and then practicing family law attorney) Michael Nye. The resolution proposed a family court with its own nonrotating bench at the level of

the circuit court with appeals to the Court of Appeals. The family court would have jurisdiction over all family matters, including circuit court domestic relations cases and matters previously heard in probate court (adoptions and guardianships) or the juvenile division of probate court (neglect cases). In other words, it was fully consistent with the Family Law Section's structural proposal.

The essential structural elements of the House Joint Resolution S were:

Chapter 10. Family Court

Sec. 1001. The family court is created and has the jurisdiction and powers provided in this chapter.

Sec. 1003. (1) Each unit of the trial court shall have a family court.

(2) Each unit of the trial court shall have at least 1 judge of the family court.

(3) Judges of the family court shall be nominated and elected pursuant to the Michigan Election Law, Act No. 116 of the Public Acts of 1954, being sections 168.1 to 168.992 of the Michigan Compiled Laws.

(4) In a unit of the trial court having more than 1 judge of the family court, the judges' terms shall be arranged in the same manner prescribed for circuit judges in section 416b of Act No. 116 of the Public Acts of 1954, being section 168.416B of the Michigan Compiled Laws.

(5) The names of the candidates for judgeships of the family court shall appear on the ballot separately from the names of other candidates for judgeships.

In a stroke of good fortune, the Family Law Section had recently hired Bill Kandler as its lobbyist. We continued to actively lobby for Nye's proposal as it worked its way through the legislature with mostly Republican support and opposition from Democrats (which was painful to me as a lifelong Democrat) as well as the State Bar and the Michigan Judges Association. The probate judges, however, supported the legislation.

The provision of the legislation that received the strongest opposition was the nonrotating bench. Although that provision survived initial legislative wrangling, some individual judges threatened to challenge the constitutionality of the law, focusing primarily on the nonrotating bench. Those judges did not want to be assigned to the family division and then remain there indefinitely or be forced to give up their seats.

By this time, Linda Hallmark succeeded Keldon Scott as the Family Law Section chairperson. Then Michigan Supreme Court chief justice Conrad Mallett scheduled a meeting at his Detroit office and invited Hallmark, Kandler, and me to appear. At that meeting, a compromise was reached that resulted in the section's reluctantly giving up the nonrotating family division bench provision.

The revised legislation was eventually signed into law by Governor John Engler. Interestingly, Hallmark was Engler's first appointment to a vacant family division seat. She was exactly the kind of judge I hoped would sit in the family division. I remember getting teary-eyed when I learned of her appointment after all those years of working to create the family court.

After the legislation was passed and signed into law but before the family court was implemented (and well before she was appointed to be one of its first judges), Hallmark, then a longtime Oakland County Friend of the Court referee, wrote an article for the September 1997 issue of the *Michigan Bar Journal*, describing the events leading to the creation of the court and its structure.⁵

It has been more than 20 years since Gov. Engler signed the legislation into law on September 30, 1996, with an effective date the following year. I remain convinced that the effort was worthwhile. I also remain convinced that losing the nonrotating bench from the original proposal has been a problem.

In many circuits, any newly elected judge is assigned to the family division, even if he or she has no interest or experience in the area. Many judges rotate out of the family division as soon as they have enough seniority. That is the same problem we recognized with New Jersey's family court. We knew from our research in 1987 and during the legislative debate in 1996 that a rotating bench would hamper the effectiveness of the family court.

If I could wish for one change, it would be restoring the nonrotating bench in Nye's original proposal, which has always been part of the Family Law Section's position. State Sen. Bill Bullard twice introduced legislation to eliminate this defect. Both times his proposal failed. I think it is time to stand on Bullard's shoulders and resurrect that proposal. ■



Scott Bassett is a lawyer, professor, musician, and tech enthusiast. He is in his 36th year of practicing law, the last 15 as one of Michigan's first virtual lawyers. Scott handles Michigan family law appeals online while residing out of state. He is a past chairperson of the SBM Family Law Section and helped create and implement Michigan's family court in the 1990s.

ENDNOTES

1. Virtue, *Family Cases in Court* (Durham: Duke University Press, 1956).
2. Virtue, *What is a Family Court?*, 37 Mich St B J 14 (1958).
3. Poznanski & Bassett, *A Family Court for Michigan?*, 66 Mich B J 657 (1987).
4. Roumel, *Give Family Cases Their Due*, 65 Mich B J 522 (1986).
5. Hallmark, *The New Family Division in Michigan*, 76 Mich B J 956 (1997).