

## DISCUSSION

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### Abstract

Two of the three papers discuss the role of the attorney in assisting consumers in the pursuit of legal remedies. The third paper offers a policy discussion of a legislative remedy to a serious family problem, i.e., housing for families with children.

### Introduction

These three papers deal with aspects of the legal system and important family and consumer problems. The two research studies on child support and small claims court continue the research in these areas and each makes a contribution to the field. The policy paper on housing discrimination offers an analysis of why discrimination on the basis of "familial status" has occurred and a discussion of why such discrimination is detrimental to the entire community not just the involved families.

### Bonner

In this study, the author grouped all cases together and then compared the respondents who utilized an attorney either for advice or representation with those respondents who were without an attorney. This meant there was no distinction among plaintiffs who were individuals, full-time business persons or part-time business persons. Nor was there any way to identify the defendants and thus discern the nature of the relationship between the parties, e.g. Individual P. vs. Individual D. or Business P. vs. Individual D. It is quite possible that as plaintiffs there are significant differences between individuals and businesses. Businesses are more likely to have created business practices which assist them in court, i.e., written contracts to use to pursue or defend a case; phone notes kept on all calls; exculpatory clauses or notices posted in the business.

The lack of information on the court's monetary jurisdictional limits, the ceiling limit for the plaintiff and for the counterclaim by the defendant, and on the statutory structure of the court also impact upon understanding the results of this study. Arguably, these elements of the legal structure do influence the behavior of both plaintiffs and defendants.

It seems necessary in future studies to differentiate between legal advice and legal representation. The findings appear to suggest that neither pre-trial advice nor representation in court had any influence. The two however, are quite different and pre-purchase information is generally recommended.

Due to the size of many judgments in small claims cases, it should be expected that few litigants used legal services after receiving a favorable judgment. This is probably due to the cost of legal services versus the anticipated benefit. Collection may be difficult for any creditor and the particular court from which the judgment is issued does not generally make a difference.

Plaintiffs facing a defendant represented by an attorney complained that the representation made the trial more formal, complicated, technical and less balanced. That may, however, been a deliberate trial strategy if the defendant knew his/her defense was weak or nonexistent. Thus knowledge of who the plaintiff and defendant were as well as the subject matter of the litigation, may shed light on this issue.

In conclusion, several recommendations may be made. Further research should study only individual plaintiffs against different types of defendants. Small claims courts should be studied according to their jurisdictional limits to see if different results occur. Defendants should be studied, but again as with plaintiffs, differentiation between individuals and businesses must be made.

### Ellis

Prior literature in this area has emphasized the needs of the custodial parents and the division of responsibility to pay in accordance with relative ability to pay. The focus of this particular study is on the subset (S) of legal system characteristics in an equation on child support. This research provides detailed information on background characteristics of attorneys and their perceptions of judges.

Most of the variation in child support awards remains unexplained. The introduction of child support guidelines, however, may resolve some of the lack of explanation. Ohio's child support guidelines are based upon the Income Shares Model, developed by the Child Support Guidelines Project of the National Center for State Courts, under a grant from the U.S. Office of Child Support Enforcement. The Income Shares Model is predicated on the concept that the child should receive the same proportion of parental income that he or she would have received if the parents lived together.

Several concerns do exist with this study. The criteria for selection of the domestic relations cases was the presence of a minor child in the family. There was no distinction made in the sample between dissolution cases (Ohio's "no-fault" divorce alternative) and divorce cases. In dissolution cases, the parties must reach agreement on child support without any intervention by the judicial system. Nor were divorce

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cases further divided between those cases in which the parties ultimately reached a child support agreement and those in which the judge had to decide the child support amount. Cases in which the parties ultimately reach the decision on amount of child support could be significantly different from those in which they can not.

A major concern is with the use of Ohio's child support guidelines. The adoption of the child support guidelines in Ohio was highly controversial and they became operational on October 1, 1987. Since this study examined only cases filed in the first six months following implementation, there was little time for learning about and accepting the use of the guidelines. The second and potentially more serious problem is with the relationship between these child support guidelines issued by the Ohio Supreme Court and the Ohio Revised Code statutory guidelines (Sec. 3109.05). The language of the issuing document states that, "The (guidelines) shall be used as a starting point and considered in conjunction with the appropriate statutory provisions... Then in capital letters the statement is made, "HOWEVER, THE COURT SHOULD EXERCISE BROAD DISCRETION IN DEVIATING FROM THE GUIDELINES IN CASES WHERE APPLICATION WOULD BE INEQUITABLE TO THE CHILD(REN) OR TO ONE OF THE PARTIES." Thus, deviation was encouraged and no mention was made of integration of the guidelines with the statutory factors. Thus, it is possible that these two problems with the guidelines exerted a negative impact on both judges and attorneys.

The statement, "This study found Central Ohio attorneys to be reluctant to win child support awards are not as predictable as they could be.", suggests a lack of advocacy by the attorneys in the study. The author is interpreting the action of not seeking an award in excess of the child support guidelines as reluctance in seeking child support awards. This may be an incorrect interpretation. The explanation may be related to the factors mentioned above and/or on an appreciation of the full impact of the guideline amounts. Unlike a number of other states, the amount of child support provided by the Ohio guidelines is based upon gross incomes of the parties. These guidelines were considerably above those amounts which courts across the state of Ohio had been ordering. Thus, the general perception in the legal community was that the support awards under these guidelines were a significant change to begin with and the discretion to deviate from the guidelines would mean a downward deviation not an upward one.

"One of the essential elements of the law is some measure of uniformity. One of the important elements of law is predictability".

A causal relationship between advocacy to procure child support awards above a guideline amount and predictability of such awards was not investigated in this paper although the author did link those two ideas. Nor is there any differentiation between consistency of child support awards and predictability of awards. There may or may not be any causal relationships between advocacy by

the attorney and consistency or predictability of awards. Neither however, were researched in this paper. If either is the desired topic of research then cases decided before the implementation of the guidelines could be matched and compared with cases decided after implementation. Or comparisons could be made between similar cases from different counties or among those divorce cases in which there is a judicial determination of child support.

The paper would be strengthened by an explanation of the conceptualization of "judge's integrity" and clarification of the role of the judge. It would be quite possible to argue with the assertion that judges are a part of all divorce cases and approve all settlements. If couples use a Separation Agreement, it is quite likely that it will not be reviewed by a judge.

DeLuca and Quinn

This paper provides a valuable examination of the Fair Housing Amendment Act of 1988. As the authors note the new law is important because it is the first time legislative enactment has given protection to "familial status" under federal civil rights law. The point that discrimination on the basis of the presence of children in the family may be economically beneficial to the individual landlord but detrimental to the community at large, may need greater elaboration with the general public in any explanation of the new law.

As the authors note landlords may still discriminate against individual families on characteristics such as inability to pay or a recent bankruptcy but not on membership in a class. In practice, however, landlords may continue to discriminate on the basis of familial status but allege one of the other acceptable reasons for such discrimination. Thus, case by case development will be necessary as courts interpret the law in relation to specific factual patterns.

Because landlords may have the perception that renting to families with children is more costly than renting only to adults, it may be that considerable education will be required before this perception is changed. The passage of this corrective legislation is only the beginning, considerable work related to implementation remains to be done.

#### REFERENCES

Megaw, L. J. (1971). "The Mihalis Angelos", 1 Q.B. 164 at 205.

Ohio Child Support Guidelines (1987). Ohio Rules of Superintendent Rule 75. August.