

FIRST ANNUAL REPORT OF THE ACCESS TO JUSTICE COMMISSION

The Access to Justice Commission held its first meeting on June 21, 2005. Thereafter it held eight meetings to and including its anniversary meeting on June 21, 2006. The meetings have been held in Framingham, either at the American Cancer Society or at the Metrowest Community Health Care Foundation. Each organization has made its facilities available at no charge. Members of the Commission held a public hearing in Springfield on May 12, 2006, to hear from recipients of legal services, judicial department personnel, attorneys, and others. In the course of the year the Commission heard from entities that distribute legal service funds, including the Massachusetts Legal Assistance Corporation (MLAC), the Massachusetts Bar Foundation (MBF) and the Boston Bar Foundation (BBF), and from local, regional and state-wide programs that are recipients of those funds. The Commission is indebted to its consultant Gerry Singen for his wisdom, experience, and guidance.

General Discussion

The most obvious concern in providing access to justice is the quantity, and not the quality, of legal services available to persons of low income in the Commonwealth. The deficiency in quantity is directly attributable to the lack of sufficient funds. Although the Commission has no direct role in urging the Legislature to appropriate funds for legal services for those of low income, the Commission is interested in other funding sources (and in educating the public and legislators about the basic need). As the Justices know, the Commission is considering the merits of imposing a fee on each out-of-state lawyer who is admitted pro hac vice in a specific case (including one who files an amicus curiae brief by leave of court). We hope that the funds collected will be used for legal services or related activities (such as the expenses of the Commission). Almost all states charge such a fee, and a respectable number allocate collected funds to legal services.

Another funding source under examination would entail asking each lawyer, at the time of renewal of his or her annual license with the Board of Bar Overseers, to contribute toward legal services. The Justices' current pro bono rule expresses the hope that each lawyer will contribute time or money, or both, to legal services. A request for a contribution would increase

the response to the rule. Obviously, the views of the Board of Bar Overseers and the bar toward such a contribution program will have to be considered carefully. Other states do have similar programs, the most successful of which provide for opting out of making a specific contribution which is built into the total amount billed in the statement.

Although the approval of the new interest-rate rule for IOLTA funds came after the end of the Commission's first year, we note that the expected availability of substantial additional funds for legal services will permit the Commission and others to investigate how those funds might be used. Among possible uses of the additional funds are: (1) taking steps to eliminate, or at least reduce, unequal legal service salaries and benefits across the Commonwealth; (2) providing funds with which legal services program leadership can consider and implement plans to provide services in emerging areas of client need; (3) funding efforts to fill substantive and geographic gaps in the current delivery system; (4) funding surveys of social service organizations to determine how best to coordinate their assistance to low income persons with the system for the delivery of legal services to the same eligible families; and (5) funding the Commission and occasional conferences attended by providers, clients, social service organizations, court personnel, and others.

The Commission is also concerned with increasing legal services directly. The Justices' recent approval of "unbundled" services appears to be an effective step in this direction. We want to encourage lawyers, including those in corporate law departments and in government agencies, to volunteer their services.

The Commission is interested in what law schools may do. For example, how far will law schools be willing to grant tuition remission for graduates who commit to spending a number of years in legal services work? Is the current system of using supervised law students in the representation of persons of low income the best possible?

Finally, we are also interested in avoiding the litigation of disputes by encouraging means by which disputes can be resolved in an atmosphere less contentious and less costly than a law suit.

One means of increasing the availability of lawyers to persons in need of legal assistance is to provide for public funding of counsel in certain kinds of proceedings. Any requirement need not be constitutionally-based. Massachusetts statutes direct or authorize the appointment of counsel at public expense in a number of proceedings. The Committee for Public Counsel

Services has broad authority to appoint counsel for indigents in civil proceedings in its discretion. The problem is funding. CPCS has to establish priorities and expends funds for counsel in civil matters under substantial legislative scrutiny.

Help at the courthouse is very important to self-representing litigants. State funding for personnel specifically retained to help these litigants is most desirable. In the absence of such assistance, a person of low income who does not have a legal services or pro bono lawyer is often left with a daunting task. Written material in a language that the person reads can be of assistance. What can assistant clerks, assistant registers, and other judicial department personnel behind the counter be allowed to do?

There is a sound basis for current rules that state that such persons would be practicing law in giving legal advice to a person seeking help. But is the restriction appropriate? Should not a well-trained, experienced person in the Housing Court or the Probate and Family Court be permitted to explain the procedures, the basic issues confronting the pro se litigant, and the steps to be taken? What if each side of a controversy is acting pro se? How should people “behind the counter” act? If we are concerned, as we are, with access to justice and with removing barriers to that access, the current limitations on court personnel assisting pro se litigants may hinder achievement of our goals. We want to pursue this question with court personnel and others. Our surmise is that the practices in the various courts in the Commonwealth are far from uniform in this respect.

The Commission has had and will continue to have extensive discussion of its proper role. Unlike most (if not all) other Access to Justice Commissions, your Commission is not involved in lobbying the Legislature for the appropriation of funds for legal services. The Equal Justice Coalition has the lead role in that endeavor.

Because the supply of legal services available to assist persons of low income is so small in relation to the demand, we do not plan on giving priority to the education of the low-income community about access to justice. Indeed, we plan on identifying steps that can be taken to increase the level of effective legal services available to persons of low and moderate income. By “legal services” in this context we mean not only the services of a lawyer but also assistance from a trained lay person and helpful written materials and videos. We shall not discover and propose a major break-through, but rather we hope to identify small but beneficial steps that should be taken to enhance the delivery of legal services.

The Springfield Hearing

On May 12, 2006, members of the Commission held a public hearing in the Commissioners' Room in the Hall of Justice in Springfield. Although there were substantial efforts at obtaining press coverage, and there were various announcements of the hearing, there were few present other than Commission members and panelists who made presentations. The press coverage of the event was minimal. There was only one television report of the event, and that report might not have occurred but for the presence of Justice Greaney who attended the hearing and was interviewed.

The object of the hearing was to identify existing barriers to access to justice and what might be done to overcome those barriers. Two panels of clients and client representatives presented their views. They found it difficult to isolate their difficulties with access to justice (including obtaining legal assistance) from their overall problem with poverty. Certainly it was clear that language barriers present a substantial problem and that many people of low income do not know that their problem may have a legal solution or, if they do know, where to get legal assistance.

A panel of judicial department representatives and a panel of bar leaders and lawyers practicing in the legal services field provided several suggestions for strengthening the delivery of assistance to persons of low income. The Commission will pursue these suggestions, some of which are mentioned in the discussion above. Public input during an "open mike" opportunity at the end of the hearing was impressively unproductive. The Commission was pleased, however, with the results of the hearing and plans further hearings, the next to be held in the fall in New Bedford.

Regionalization

The Commission intends to assess in the future the effectiveness of the recent regionalization of the LSC- and MLAC-funded local legal services programs. Regionalization created four geographic regions in the state, each with one federally-funded entity and one entity funded by MLAC (with two MLAC-funded entities in the Central-West region). Each region

has had a different pace to its process, and each has evolved a unique regional system. The Eastern region has completed its process. The Northeast region has a new, integrated corporate structure in place and is working on new service delivery collaborations. The Southeast region has completed a merger and is developing its strategic advocacy plan. The Central / West region is planning modifications to its decade-old three- program regional system. The costs of instituting regional systems, and the benefits to clients resulting from these changes, are likely to vary from region to region, but it is too soon to evaluate the outcomes of these processes.

Conclusion

The Commission will continue to define its role and what may be done to emphasize the importance to society of providing effective access to justice. Our capacity to investigate and support the delivery of assistance to people who need help in overcoming barriers to justice is limited by the lack of direct funding for the Commission and for the various possible projects that can be achieved only with funding. Based on the experience of other jurisdictions, it is clear that the involvement of former, and especially current, members of a state's highest court is crucial to the success of a state's Access to Justice Commission.

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