

MASSACHUSETTS ACCESS TO JUSTICE COMMISSION
Supreme Judicial Court
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REPORT ON ACTIVITIES IN 2011

The Commission was reconstituted by the SJC in February 2010. A report on accomplishments in 2010 can be found on the Commission's website.

In 2011, the Commission expanded its efforts.

New resources for legal assistance to low-income individuals were developed.

Pro bono efforts by Massachusetts' lawyers, both in-house and in firms, were expanded.

The systems that deliver legal assistance were studied, recommendations for improvements were adopted and are being implemented.

Access to justice in administrative forums continued to draw Commission attention.

The assistance available to self-representing litigants was improved, through enhanced technology, expanded information on the web and in the courts, and support for social service agencies that provide help to consumers with legal problems.

The Report that follows briefly highlights accomplishments and work in progress at the end of November 2011.

I. Resources:

At the Commission's suggestion, last year the Supreme Judicial Court added a \$51 opt-out Access to Justice Fee to annual attorney registration with the Board of Bar Overseers. In its first year, the new Fee brought \$1.1 million to the IOLTA Committee, which was then distributed to the three charitable entities (Mass Legal Assistance Corporation, Massachusetts Bar Foundation and Boston Bar Foundation) for their use in supporting legal services.

The Commission will submit to the SJC a proposal for creation of a new *pro hac vice* fee of \$300 to be imposed on lawyers from out-of-state seeking to appear as counsel in Massachusetts courts. Proceeds of the fee would be turned over to the IOLTA Committee. Forty states and the District of Columbia impose such a fee, but

Massachusetts does not. Eight states devote all or most of the proceeds to legal aid purposes. The proposal has the support of the Massachusetts Bar Association, the Boston Bar Association, the IOLTA Committee, MLAC and the Project Directors and its implementation plan is viewed as workable by the BBO and as a useful step by several leading court clerks.

The Commission adopted a recommendation of its Revenue Enhancement Committee (led by Co-Chair Rosenberg) that a campaign be mounted to get every legal aid program to claim and collect attorneys fees in cases in which such fees are available. Current practice in many legal aid firms does not involve making such claims. With leadership from Massachusetts Law Reform Institute, a group of leading legal services advocates is organizing the campaign, which will include practice materials, training for each office and follow-up to assure implementation.

The Revenue Enhancement Committee has also spurred an effort to direct class action residuals to legal services programs. The IOLTA Committee has taken the lead, preparing appropriate brochures for plaintiffs and defendants lawyers, state and federal judges and legal services lawyers. Co-Chair Gants elicited support from Superior Court Chief Justice Rouse and Federal District Court Chief Judge Wolf.

The Commission has supported successful funding proposals to the Legal Services Corporation and the State Justice Institute, has written to the Massachusetts' legislative leadership in support of MLAC funding and against cuts in the Trial Court budget, and has approved sending a letter to the Governor supporting inclusion in the Governor's next Supplemental Budget of funds to make up for the most recent decline of \$1.7 million in IOLTA funding. The Commission has also supported increased funding for the Legal Services Corporation and urged Citizens Bank not to cut its IOLTA rate.

The Revenue Enhancement Committee is developing basic tools for mounting a statewide fund raising campaign, including a "business case" for philanthropic support of legal services. [The Commissioners who are judges are taking no part in this activity.] If implemented, the campaign will seek support from corporations, corporate leaders and wealthy individuals. This will be the first such statewide effort and the first campaign not targeted primarily at lawyers. One potential benefit of this campaign is creation of funding for services outside greater Boston that balance the disproportionate presence of lawyer contributions from Boston-based law firms.

II. Pro Bono:

In the spring the Commission sponsored a Pro Bono Forum for In-House Counsel. Lawyers working in corporate, educational and other legal departments rather than in law firms were encouraged to become involved in volunteering their services to help low-income clients on a *pro bono publico* basis. In conjunction with the Forum, the Commission developed, and posted on the Commission website, a Massachusetts Pro

Bono Opportunities Guide for In House Counsel. Following the Forum, the Commission has been tracking the pro bono participation of the attendees, and providing further support as requested.

The SJC's Standing Committee on Pro Bono Legal Services, adopting an initiative begun by Commission Co-Chair Gants, implemented a *Pro Bono* Recognition Program that annually honors law firms, solo practitioners, in-house corporate counsel offices, government attorneys offices, non-profit organizations and law school faculties for *pro bono* contributions above and beyond the requirements of Rule 6.1. The first recognition ceremony was held in the SJC Courtroom in October, recognizing nineteen law firms and solo practitioners, as part of *pro bono* week celebrations.

The Commission is reviewing several mentoring models that recruit experienced practitioners to mentor new lawyers whose practice setting does not provide such mentoring. Accordingly, the Commission reached out to various bar associations and legal services offices to inquire as to their mentorship initiatives. The Commission also met with representatives from all of the state's law schools to encourage them to develop mentoring efforts for their recent graduates. The Commission then compiled a list of available mentoring opportunities throughout the state that was furnished to each newly admitted member of the Bar at the November swearing-in.

See the Technology section of this report regarding the statewide pro bono website.

III. Administrative Justice:

The Commission is involved in several collaborative efforts with state administrative agency leaders seeking to improve access to justice in the agencies:

Reviewing the texts of letters denying government benefits and improving the clarity and effectiveness of the letters in telling applicants for benefits why benefits are being denied.

Exploring the possibility that a single application could be used to access multiple benefit programs, reducing the repetitive demands for documentation that now arise and the cost of maintaining parallel and sometimes conflicting databases.

Working with Patrick administration officials seeking to improve language access equality throughout agencies of the state that deal with the poor.

Joining with Access to Justice Commission members from other states to introduce better protections for self-representing litigants into state deliberations regarding adoption of the proposed Uniform State Laws revision to the Model Administrative Procedure Act.

IV. Delivery of Legal Services

The Commission's Special Planning Committee (led by Co-Chair Rosenberg) studied major leadership transitions, entered into important debates about advocacy and explored proposed changes in the structures of organizations providing free legal assistance to low-income families. The Committee met with groups of program board chairs and executive directors, discussed their plans and possible alternatives, issued a first interim report in May, and received and considered comments over the summer. The Committee's second interim report was adopted by the Commission in September and steps to implement the recommendations have begun. Major themes and associated recommendations include:

The Commission should assure that there is more regular, informed and effective planning and decision-making for the state delivery system. Ongoing efforts to fulfill this role are being taken with MLAC, the bar foundations, the grantees and others.

The structures and systems that regional delivery systems employ to deal with people seeking help are under great stress and need more organized study. Every region must decide how to screen for eligibility, provide telephone advice, accept cases for extended representation and make referrals. Major changes are contemplated in structures in two regions. The current systems employ substantial advocacy resources which might be better used in providing extended representation. In response to a Commission request, a Task Force has been convened to study and report recommendations for best practices.

The amount of systemic advocacy seems lower than optimal. In response to the Committee's concerns, the Advocacy Coordination Committee (a group of leading advocates led by Massachusetts Law Reform Institute) has been asked to devise ways to increase the amount of this work.

Communication among advocates and programs about goals, strategies, effective innovations and measurement of results is inadequate. We lack important knowledge about priorities, the allocations of resources among many competing possible goals, what the legal work produces for clients and the relationship of outcomes achieved to resources committed. Programs are being asked to invest time into increasing their knowledge of their use of resources and the outcomes of their work.

The Special Planning Committee will continue to meet and develop these actions in collaboration with all relevant stakeholders.

Participation in the Boston Bar Association's Task Force on the Civil Right to Counsel continues. The Task Force has completed two housing pilot projects studying the operation of a right to counsel for defined classes of tenants who would otherwise be

likely to forfeit their rights. The Task Force is preparing its report and parallel statistical reports are available in draft.

Following a meeting of Co-Chair Gants with the leaders of affinity bar associations, the Women's Bar Association is developing a seminar to teach young attorneys techniques for building viable law practices based on doing work for low-income clients and being compensated based on fee-shifting or attorney's fee statutes. In addition, the Women's Bar Association is developing a "Know Your Rights" program for leaders of Boston nonprofits focused on eradicating family homelessness, modeled after a unique program created by the South Asian Bar Association of Greater Boston discussed at the affinity bar meeting.

Exploring ways to support social service agencies that provide information, advice and advocacy to low-income agency clients dealing with legal problems in administrative and judicial proceedings, through such devices as improving and making easily available legal information through www.masslegalhelp.org.

V. Technology

The Commission is actively supporting improving online information about poverty law, including making more data available and making all data more easily readable in multiple languages. This work has included:

Co-sponsorship of the Massachusetts Justice Project applications for TIG grants for online access to and explanations of the forms required to modify child support orders;

Development and distribution of a "button" that can be placed on any website (e.g., court, legal services program, social service agency or administrative agency) linking to MLRI's website www.MassLegalHelp.org;

Collaborating with the Trial Court's Special Advisor on Access to Justice Initiatives in development of online website information and forms in multiple languages; and

Collaborating with the Law Libraries of the Trial Court and Massachusetts Law Reform Institute in creation of an "ask the librarian" button on www.MassLegalHelp.org, which opens an instant message window to a Trial Court librarian who can guide the consumer to the desired information.

Creating a single, comprehensive webpage, available at www.MassLegalHelp.org, with links to all court-approved legal forms available online.

Support for a TIG grant to the Volunteer Lawyer's Project to create a single website for access to all pro bono information and opportunities available across the state.

VI. Courts

Supporting the projects of the Special Advisor to the Trial Court on Access to Justice Initiatives , including the development of information centers in trial courts across the state, creating more forms available to self-representing litigants online and in multiple languages, and spreading the approval of limited access representation throughout the trial courts.

Several years ago a special judicial committee issued guidelines for judges dealing with self-representing litigants. The Commission is now seeking to codify those guidelines in the Code of Judicial Conduct.

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