

MASSACHUSETTS
ACCESS TO JUSTICE COMMISSION

Report on 2012:
Objectives and Accomplishments

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EXECUTIVE SUMMARY

The Massachusetts Access to Justice Commission had its most ambitious and productive year in 2012. A list of Commission objectives compiled in May 2012 reported about 40 objectives grouped in seven broad areas:

- Revenue for Legal Assistance for the Poor
- Pro Bono Services
- Improving Civil Legal Aid Services
- Administrative Agencies
- Self-Represented Litigants
- Law Graduates, Law Schools and Law Students
- Planning and Communication Within the Access to Justice Community

By the end of the year, the Commission and its allies had wholly or substantially accomplished nine of these objectives and had made material progress on almost all the others. Moreover, a number of new objectives had been identified and worked on.

The first Access to Justice Commission was appointed by the Supreme Judicial Court in 2005 and served for five years. Pursuant to a sunset provision, the Court appointed the current, restated Commission in February 2010. The Commission has no funds and Commissioners serve without compensation and pay their own expenses. The Commission has a part-time consultant as its only staff; the consultant is funded by the Massachusetts Legal Assistance Corporation with a continuing contribution by the Boston Bar Association.

Broadly stated, the purpose of the Commission is to improve access to justice in the Commonwealth for all residents, but with a specific focus on people who can't afford to hire an attorney to help them resolve situations that involve significant legal issues. On many of its

objectives, the Commission works with or in support of other organizations in the state's access to justice community. Its record of accomplishment owes a great deal to these allied organizations.

The names and roles of many Commission allies are included in the report of the year's accomplishments. Deserving of special recognition are:

The Supreme Judicial Court itself, for its leadership and support of the Commission;

The Hon. Dina Fein, who serves as Special Advisor to the Trial Court for Access to Justice Initiatives and her deputy, Sandra Lundy;

The Massachusetts Legal Assistance Corporation and its Executive Director Lonnie A. Powers, for their support of the Commission and its initiatives, and

The staff of the courts, the legal services programs and the broad array of social service organization workers who daily provide Massachusetts residents the information, advice and advocacy that translate the hope for justice into access to justice.

Among the accomplishments of the Commission in 2012 are the following:

More than \$1.1 million in Access to Justice Fees collected by the Board of Bar Overseers during annual attorney registration and turned over to the IOLTA Committee for support of civil legal services to the poor.

Promulgation of SJC Rule 3:16 establishing a fee for appearances *pro hac vice* with the proceeds devoted to civil legal services to the poor.

Implementation of a planning and training process designed to increase claims for attorneys' fees by legal services programs in appropriate cases.

Creation of an Access to Justice Fellows program, with senior lawyers providing pro bono services on major projects in collaboration with public interest organizations.

A \$20,000 grant to develop a statewide campaign to raise funds for civil legal services to the poor from corporate leaders, corporations and individual donors.

Among the accomplishments of allies working with Commission assistance are the following:

The Task Force on Civil Right to Counsel completed reports on its first two pilot projects and obtained a \$400,000 grant for two more pilot projects.

The SJC's Pro Bono Committee increased the number of firms recognized on the Pro Bono Honor Roll.

The Intake Task Force of the Legal Services Project Directors group, at the request of the Commission, prepared a comprehensive report on intake, screening, advice and referral.

The Trial Court's Special Advisor on Access to Justice Initiatives led the expansion of online forms in multiple languages for small claims proceedings and the adoption of rules for limited assistance representation.

The Judicial Institute provided training for judges on dealing with self-represented litigants.

The Supreme Judicial Court adopted amendments to the Code of Judicial Conduct that permit judges to speak more freely on access to justice issues.

The Massachusetts Law Reform Institute substantially expanded and improved its website www.masslegalhelp.org providing information, forms and advice on poverty law to low income and other individuals.

Along with the continuing objectives, the Commission begins 2013 with work in progress on several important new undertakings. For example:

The Commission has begun an effort to see that court service centers are placed in Massachusetts courthouses to help self-representing litigants.

Following up on the report on the civil right to counsel, the Commission has resolved to seek expansion statewide of the Housing Court.

An inquiry into the role of the bar exam in shaping law school curricula and improving the preparation of law students to do pro bono work has led to a recommendation that "access to justice" be added to the list of topics covered by the bar exam.

Joining the process of strategic planning for the courts in order to help with building access to justice solutions into the plans.

Working with the courts, administrative agencies, legal services providers, social service organizations and others to find better ways to deal with two themes that emerge in almost every Commission effort: how to get the best technology and how to assure language access.

FULL REPORT ON 2012

In May 2012, the Commission's increasingly complex array of projects was brought together in a single document for the first time. "Objectives for 2012" described what each project was expected to accomplish by the end of the year, named the individuals or organizations with the lead responsibility for the project and briefly noted where the project stood in May. As the year progressed, "Objectives for 2012" was updated several times. Developments were incorporated, expected accomplishments by year end were refined, delays were acknowledged and year-end expectations revised. In addition, new objectives were established and added to the document.

In this report, each project summary begins with the objective sought in 2012 and a description of where the project stood at year's end. Plans for 2013 are listed and a new planning document, Objectives for 2013, will be available shortly.

Objectives Related to Improving Civil Legal Aid Services

In the fall of 2011, the Commission adopted a series of recommendations of its Special Planning Committee. A number of 2012 objectives represent attempts to accomplish these recommendations.

The following two objectives are being pursued through a process organized by the legal services programs to respond to the fifth and sixth recommendations contained in the 2011 Special Planning Committee report.

Systemic Advocacy: Regional plans to meet targets for systemic advocacy were to be in place, but are taking longer than planned to develop and put in place.

Lead: Advocacy Coordination Committee (ACC) (leading litigators in legal services programs, under the aegis of the Project Directors of the MLAC and LSC grantees) with administration by MLRI.

Status: Plans are due in the first half of 2013, with training and monitoring to begin at that time.

Intake, Screening and Hotline Processes: The Intake Task Force produced a comprehensive description of intake, screening and hotline processes in each of the four regions. The report stopped short of an analysis of comparative costs and benefits and did not attempt to determine what had been learned from the fifteen year experiment with hotlines in three regions. Best practices were not determined and proposals for change were not developed.

Lead: Intake Task Force, created by Project Directors of LSC and MLAC grantees, in response to a request of Commission.

Status: Special Planning Committee will consider next steps in spring 2013.

Expanding the Right to Counsel in Civil Cases: The Boston Bar Foundation Task Force published its report on its two right to counsel pilot projects in Quincy District Court and the Northeast Housing Court, and Harvard Professor James Greiner published his statistical analysis

of the pilot outcomes. The impact of providing counsel in Quincy was very beneficial to tenants and had ripple effects throughout the court. In Lynn the impact of providing counsel was not able to be determined.

Lead: Task Force on Expanding the Civil Right to Counsel and Massachusetts Law Reform Institute.

Status: Plans to follow-up the reports are being developed and implemented, and actions are under way to explore the meaning of Turner v. Rogers for access to justice in Massachusetts. Justice Gants, along with Professor Greiner, met separately with judges and legal services advocates involved in the first pilots to weigh the meaning of the study.

Members of the Task Force joined with Massachusetts Law Reform Institute and obtained a new grant of \$400,000 for a second pair of housing pilots, in Worcester Housing Court and Framingham District Court, from Attorney General's HomeCorps funds.

Planning Committee Assessment of Delivery System, Including Follow-up to 2011 Interim Progress Report

Planning Meetings with Providers: Special Planning Committee will meet with each of the groups that it met with in 2010-11. The focus will be more substantive and less structural this time around, but will include progress reports.

Lead: Special Planning Committee, Massachusetts Legal Assistance Corporation

Status: Meetings with the Southeast and West/Central regions were held during 2012; meetings with MLRI and with the Northeast and East regions were held in March and April of 2013. A report is expected by June.

Proposed Rule Amendments Reviewed by ATJC. A system is in place for monitoring all rule amendments proposed by the SJC to assure that comments are made on access to justice issues.

Lead: MLRI, Advocacy Coordination Committee and Commission

Status: MLRI's Advocacy Coordination Committee accepted responsibility for monitoring and commenting, and Commissioner Rodgers was designated to monitor rule changes and assure that delivery system and Commission interests are represented in comments.

Increasing Regional Impact: Regional examinations were to be made of how resources are actually used and how greater impacts might be achieved, including development of measures of impact.

Lead: MLAC with Special Planning Committee

Status: 1. MLAC adopted a strategic plan that calls for supporting the Commission through staff time and other resources related to this objective.

2. In addition, MLAC created a Service Delivery Task Force that will review service delivery priorities, with the intent of balancing the demands of meeting individuals' urgent and immediate needs while maximizing overall impact and making progress on the long-term vision of addressing poverty by pursuing equal justice, develop a uniform system of outcome measurements for use throughout the MLAC-funded

system, work with the programs intake task force to assess and identify options for improving client intake, and work with the programs to engage with other organizations and individuals who are working to improve access to justice, such as: social service agencies, client groups, pro bono lawyers, law graduates, law students, the courts and lay advocates.

More Effective Use of Technology: Steps to improve program technology will be taken.

Lead: MLAC and Working Group on Web and Technology

Status: 1. Based on Commission comment, the MLAC strategic plan was revised to include assessing the feasibility of reinstating joint purchasing of hardware and software (so that by the end of FY16, MLAC and LSC programs are on a three-year replacement cycle), developing a robust inter-program communications network providing videoconferencing and a common VoIP telephone system and researching the current state of case management systems (goal: recommending, by the end of FY15, a case management system to be used by all MLAC-funded programs and available to be adopted by LSC-funded programs).

2. The Working Group will determine its role in these areas in 2013.

Evaluation Project Developed: There will be increased use of evaluation to learn from current efforts and improve impact of work for clients.

Lead: MLAC and Special Planning Committee

Status: MLAC adopted and implemented a provision in its strategic plan reinstating peer review of programs on a three-year cycle. The SPC will gather information about the new peer reviews during regional visits.

Client-Led Project: A project will be developed in which eligible individuals take a lead role in contributing to access to justice efforts.

Lead: Commission

Status: Planning in 2012 was inconclusive. One possible project will be tested in 2013.

Social Service Agencies, Public Librarians, Social Workers, And Lay Advocates: Social service agency workers will be enabled to be more effective in providing information to, and advocacy for, their clients.

Lead: Web and Technology Working Group

Status: The website www.masslegalhelp.org expanded its content and was made more accessible. The Commission will review its objectives in this area in 2013.

Objectives Related to Revenue for Legal Assistance for the Poor

For these six objectives the Commission's Revenue Enhancement Committee (REC) has at least general planning responsibility. The REC has an interest not only in finding new revenue but also in how new revenue is distributed and how it furthers achievement of other Commission goals. The Judicial members of the Commission abstain from participation in REC activities.

Development of a Statewide Fund Raising Campaign: Use consultant retained with innovations grant to design a statewide campaign for contributions from corporations, corporate executives and other individuals. Implement in 2013.

Lead: Revenue Enhancement Committee; Dave Rosenberg

Status: A grant of \$20,000 was awarded to the Commission by the Public Welfare Foundation and the ABA Resource Project for Access to Justice Commissions. An expert fundraising counsel is being sought and the grant will be completed in 2013.

Pro Hac Vice Rule: Final adoption and implementation of a rule.

Lead: Revenue Enhancement Committee

Status: The SJC promulgated Rule 3:16, which took effect September 4, 2012. It provides for fees of \$301 in some courts, \$101 in others. Fees, paid to BBO, are turned over to IOLTA Committee. Initial indications suggest annual revenues of more than \$200,000. The Committee will monitor implementation of the Rule during 2013.

Access to Justice Fee Add-On: Monitor the second year of revenue (through July 2013) and decide whether to undertake any steps to increase the revenue during the third year.

Lead: Revenue Enhancement Committee

Status: Revenue is approximately \$1.2 million for 2012 and participation is at about 33%, which may be the highest rate among comparable programs nationally. The REC does not recommend any additional action beyond monitoring in 2013.

Attorney's Fees: A system in place to support increasing claims for attorney's fees to which MLAC and LSC grantees are entitled, and to collect data with which to measure results.

Lead: Massachusetts Law Reform Institute, Center for Public Representation and attorney's fee campaign group organized under Massachusetts Law Reform Institute.

Status: Preliminary training conducted in every region. Regional plans were submitted during the fall of 2012. Attorney's fee campaign group will implement the system in 2013 and the REC will monitor the results.

Class Action Residuals: Monitoring pending class actions and encouraging judges and counsel in class actions to direct residuals to IOLTA or to legal aid programs.

Lead: IOLTA Committee supported by REC

Status: Occasional residual awards have been received by the IOLTA Committee and individual legal services programs but it is not clear how much of this is materially attributable to the Commission.

Amendment of M.R.C.P. 23(c): Amend Rule 23(c) to specify a minimum share of class action residuals that will automatically go to the IOLTA Committee.

Lead: IOLTA Committee supported by REC.

Status: This objective was adopted in 2012. A pro bono law firm is reviewing legal issues and IOLTA is studying practices in other states with such rules, such as Pennsylvania and Washington.

Support Appropriations. Provide consistent, timely support for Equal Justice Coalition and LSC efforts to obtain increased legislative funding.

Lead: MLAC

Status: For the state's fiscal year 2013, MLAC received an increase but LSC was cut for calendar year 2012. The same pattern is emerging in again, with the Governor supporting a significant increase for FY 2014 while LSC is cut by the sequester and by updating the census count of the poor (Massachusetts' share of the national poverty population is getting smaller).

Objectives Related to Pro Bono Services

Access to Justice Fellows Program. The pilot group of seven retired Fellows providing ten-twenty hours/week of pro bono services at legal aid service providers and other nonprofit organizations.

Lead: Commissioner Finegan, attorney Martha Koster

Status: Formal inauguration with seven Fellows, plus one honorary Fellow (Chief Justice Margaret Marshall) took place on September 27, 2012.

Statewide Pro Bono Website: Using an LSC TIG grant, VLP is developing a website for statewide use in pro bono service delivery, with July 2013 target date for full implementation.

Lead: Volunteer Lawyers Project, Web and Technology Working Group

Status: Slightly behind schedule but should be operational in 2013.

Pro Bono Campaign for those attorneys who traditionally have not performed pro bono work: Including in-house counsel, stay at home parents, and government lawyers.

Lead: Supreme Judicial Court's Pro Bono Committee

Status: During the year, collaboration increased between the SJC Pro Bono Committee and the Association of Corporate Counsel (ACC) in order to increase in-house pro bono; in an effort to engage stay-at-home parents, the Committee reached out to all inactive lawyers with suggestions for pro bono work, and the committee overseeing Government pro bono work recruited its first group of volunteers from federal agencies.

Pro Bono Work By Corporate Counsel Not Licensed In Massachusetts: Just after the new year 2013, the Supreme Judicial Court adopted an amendment to SJC Rule 4:02(9)(b) to allow lawyers in corporate counsel offices to take pro bono cases even if they are not admitted in Massachusetts. The Commission supported the proposal.

Lead: SJC Pro Bono Committee

Pro Bono Honor Roll (Formerly Recognition Program): Increased the number of firms and individual lawyers recognized at the second annual ceremony October 24, 2012 from 19 nineteen in 2011 to twenty-nine in 2012. Firms earning recognition also received a new "SJC Pro Bono Honor Roll" button that can be displayed on the participating firm/organization's website.

Lead: SJC Pro Bono Committee

Objectives Related to Access to Justice in Administrative Agencies

Common Application For Benefits To State Agencies: Work with Executive Office of Health and Human Services to establish a non-duplicative application process for a variety of benefit programs to reduce the burden on applicants as well as state government.

Lead: Administrative Justice Working Group

Status: Working group members benefit from research accomplished via the Northeastern Law School's LSSC Social Justice program, and have begun a dialogue with EOHHS officials on recommendations for a universal benefits application. New federal legislation (the Affordable Care Act) has provided funds and requires state development of a common application, which will enhance the Commission's efforts.

Language Of DTA Notices: New language in use in notices and other communications from Department of Transitional Assistance that more clearly explains what is happening and why.

Lead: Administrative Justice Working Group

Status: In 2012, Greater Boston Legal Services settled a federal court action against DTA, which included changes in DTA's notices to its program beneficiaries. The settlement, which awaits court approval, includes revised texts for some key notices, standards for all DTA notices (including readability guidelines), and continued cooperation between GBLS and DTA on notices.

Plan for 2013: After the settlement is approved by the court, resume discussions with Executive Office of Health and Human Services about expanding the principles to other human services agencies, particularly MassHealth.

Language Access Plans Of Administrative Agencies Monitored: The Language Access Coalition (legal services advocate group) and the Commission's Working Group monitor and seek improvements in implementation of agency language access plans developed under direction of the Executive Office of Administration and Finance.

Lead: Language Access Coalition; Administrative Justice Working Group

Status: Monitoring and making recommendations to Administration and Finance about Administrative Bulletin #16 and about agency compliance.

Objectives Related to Access to Justice for Self-Represented Litigants (SRLs)

The first five objectives listed here are not the prerogative of the Commission. However, they concern important initiatives in the judicial system that the Commission supports or advocates for.

Access to Justice Initiatives in the Trial Court: Support the projects of the Trial Court's Special Advisor on Access to Justice Initiatives, including making more forms available, in multiple languages, for trial court practice, increasing information centers, improving web access to downloadable forms, and encouraging limited assistance representation.

Lead: Commissioner Fein

Status: Progress was made on all fronts (see the Special Advisor's Annual Report).

Adopt A Resolution In Favor Of Creating Court Service Centers In The Courts And Work With The Courts To Help Achieve That Goal.

Lead: Commissioner Doniger and a court-based Task Force assembled for this purpose
Status: The resolution was adopted and court service centers are under consideration in the Trial Court's strategic planning process.

Participate In The Trial Court's Strategic Planning Process And Promote Improvements In Access To Justice.

Lead: Co-chair Justice Gants
Status: Trial Court planning is under way with Commission input.

Training For Judges And Clerks: Commission Supports Training On Dealing With Self-Represented Litigants Based On Guidelines.

Lead: Commissioner Cohen
Status: Very well-received training provided in March 2012.

Amend Code Of Judicial Conduct To Permit Judges Some Latitude To Speak On Access To Justice Issues And Funding.

Lead: Commissioner Cohen
Status: Amendment of Rules 4A and 4B published for comment by SJC Special Committee chaired by Commissioner Cohen.

Sponsor A National Analysis Of The Role Of Law Librarians And Public Libraries In Assisting Self-Represented Litigants. Develop appropriate recommendations and support highest and best use of librarian skills.

Lead: Marnie Warner and a Task Force assembled for this purpose.
Status: Richard Zorza's analysis was published in the spring, with the Commission listed as a co-sponsor. The Trial Court's strategic planning process is considering the role of law libraries and librarians.

The following four objectives all concern technological innovation to improve access to justice for SRLs under the Web and Technology Working Group.

Website For Self-Represented Litigants: www.masslegalhelp.org content covers all significant areas of poverty law and the number of monthly visits to the site continues to grow. Many social service agency websites display MLH "button" for link to website.

Lead: Massachusetts Law Reform Institute and Working Group on Web and Technology
Status: MLRI has substantially expanded and improved the MassLegalHelp website's provision of information, forms and advice on poverty law, the number of visitors is growing and the "button" is spreading.

Forms For Modification Of Child Support, Using Interactive Online Interview, In English And Spanish.

Lead: Massachusetts Justice Project and Working Group on Web and Technology
Status: Online for beta testing early in 2013.

Compendium of Online Court Forms: All forms authorized for use in Trial Court proceedings by SRLs available for downloading from www.massLegalHelp.org.

Lead: Working Group on Web and Technology

Status: Delayed by technical obstacles.

Law Librarians: Live online consultation available on referral from MassLegalHelp.org.

Lead: Working Group on Web and Technology and Library Task Force

Status: In operation.

Examination of Whether Individuals Experience Access Difficulties in Housing Court. The Housing Court Practice Working Group conducted a study and issued a report on its findings.

Lead: Housing Court Practice Working Group.

Status: The Report of the Housing Court Practice Working Group was presented to the Commission in August by Commissioners Pierce and Feldman. Recommendations concerned such issues as increasing referrals from the District Court to the Housing Court, reviewing agreements for judgment involving at least one self-represented litigant, training for housing specialists, arranging social service staff present for summary process days and increasing lawyer for the day programs. The recommendations are being considered within the Housing Court.

Expand Housing Court Statewide.

Lead: Commissioner Van Buren and MLRI Executive Director Katsoulomitis.

Status: The Report of the Housing Court Practice Working Group recommended that the jurisdiction of the Housing Court be expanded to cover the entire Commonwealth. Commissioner Van Buren and Director Katsoulomitis met with stakeholders throughout the state and developed a report on Commission options regarding the recommendation. In January the Commission adopted the recommendation and appointed Commissioner Van Buren and Director Katsoulomitis to lead the effort.

Objectives Related To Law Graduates, Law Schools and Law Students:

Changing the Bar Exam So That Lawyers Are Better Prepared for Pro Bono Work.

Lead: Group of nine, three each from Commission, Massachusetts Bar Association and Boston Bar Association.

Status: In the fall, the Commission's proposal to create the group was accepted by the bar associations. The group met several times, vetted preliminary proposals and will present its proposals at the March 2013 Commission meeting.

Incubators: Pilot projects under way to train interested individuals to be successful in a private practice for low and moderate income clients.

Lead: Suffolk University Law School, Northeastern University School of Law, the Women's Bar Association, Boston Bar Association.

Status: Both law schools are seeking the resources with which to begin a program in the fall of 2013. The Women's Bar held a training session in October. The Boston Bar is sponsoring educational programs on operating a small practice.

Objectives Related to Planning and Communication Within the Access to Justice Community

Multi-year Planning: A process will be adopted that leads to ongoing, careful and comprehensive planning for the access to justice effort in Massachusetts in 2013 and beyond.

Lead: Special Planning Committee

Status: SPC subcommittee engaged in exploratory analysis. A report is expected in June 2013.

Communications and Coordination: The Commission website will be upgraded, the list of people receiving updates will be expanded and consciousness of the Commission's activities will increase in the legal community.

Lead: Special Planning Committee

Status: The Commission Co-Chairs and other Commission representatives spoke at innumerable public gatherings and bar meetings and took leadership roles in the national community of access to justice commissions, resulting in much greater recognition of the Commission's activities. Occasional Access to Justice Updates were sent to an expanded list of interested stakeholders. The website upgrade was postponed.

CONCLUSION

The Commission will build on this record of accomplishment to improve access to justice in 2013.