

VIRGINIA ACCESS TO JUSTICE COMMISSION

Quarterly Report to the Supreme Court of Virginia

April 15, 2015

The Virginia Access to Justice Commission submits this report in accordance with the order entered by the Supreme Court of Virginia on September 13, 2013 establishing the Commission. That order requires quarterly reports on Commission progress during the first two years of the Commission's existence.

The first meeting of the Commission in this calendar year was held on March 30, 2015 at the Virginia Supreme Court building. A quorum of the Commission was present. At the March 30 meeting, a presentation was given by Deborah Smith, Esq., Senior Analyst, National Center for State Courts, and member of the Commission's Committee on Access for Self-Represented Litigants. Ms. Smith provided an overview of various state court Access to Justice websites, highlighting the websites of seven states that use technology to promote access to justice for self-represented litigants. The on-line availability of court forms and instructions, including forms translated into plain English language (6th grade level) and other languages, was featured, along with links to informational resources and document assembly programs. The presentation prompted questions and comments from members on funding for website development and control of website content. The Committee on Access for Self-Represented Litigants was tasked with exploring ways to improve Virginia's website in regards to access.

This discussion segued into an overview of Tennessee's Access to Justice Commission given by Virginia Commission member Larry Harley. Tennessee's Commission, formed in 2009, is guided by a formal strategic plan, which is of interest to Virginia Commission members. Various approaches to improving and further developing a strategic plan for Virginia access to justice initiatives were offered, from seeking prospective approval of broad goals to working on specific, discrete tasks through the Commission's existing structure and process. A new ad hoc committee led by Mr. Harley will further investigate the Tennessee model of strategic planning.

The Commission received reports from its committees. Each of the four committees met at least once during this past quarter, and new committee members were added. Each committee presented a report at the March 30 meeting.

The Committee on Access for Self-Represented Litigants reported a strong response rate to its survey of trial judges about handling pro se parties who appear before them. This data is being analyzed and will be shared. The clerks' survey, designed to gather information about assisting pro se litigants, with a focus on court forms and informational resources, is underway. Survey results may inform the Commission's future work. This committee will continue to monitor efforts to allow lawyers to provide unbundled legal services as a way to expand access. Kimberly McKittrick, Clerk of the Montgomery County General District Court, has joined this committee. Gail Warren, Virginia State Law Librarian has also joined this committee, especially to consult on technology issues.

The Judicial Education Committee reported that its efforts to include topics relating to access to justice at judicial conferences have continued to be fruitful. At the upcoming May Judicial Conference of Virginia, Judge Alston will lead a panel discussion at a break-out session titled

“The Challenges and Ethical Balances to Consider in Advancing the Disposition of Cases Involving the Pro-Se Litigant.” It is hoped that Chief Justice Lemons will emphasize access to justice in his State of the Judiciary address. Approximately 80 newly appointed judges will hear a presentation on “Managing Cases Involving Self-Represented Litigants” at the Pre-Bench Orientation Program this spring. A video module on a related topic will be provided to substitute judges. This committee plans to use data from the judge and clerk surveys to harvest new topics for judicial education and may develop a webinar on access issues.

The February 27, 2015 Virginia Supreme Court order amending the Comments on Judicial Canons 3(B)(3) and 4(B) relating to self-represented litigants and pro bono service was enthusiastically recognized by Commission members. The Judicial Education Committee will revise its “Practice Points for Civil Matters Involving Self-Represented Litigants” for district and circuit court judges to include this new guidance from the Court. The practice points will be widely disseminated to trial judges in benchbooks and via email and at educational events and committee meetings.

The Outreach and Education Committee reported on its progress toward developing a public outreach campaign with the Community Idea Stations of central Virginia. Messaging for the public service announcements and cost are being discussed. The announcements would be designed for three audiences: the Bar, encouraging and recognizing pro bono service; the underserved, providing information on legal aid and other resources; and the general public, educating on access and seeking sustainable financial support for legal aid. The committee plans to present a proposal on this project at the Commission’s next meeting. An invitation has been extended to Katherine Godin, Vice President of Community Development for The Community Idea Stations, to join this committee.

The Pro Bono Committee submitted, for the Commission’s consideration, a written proposal for a new Rule of Professional Conduct on mandatory reporting of pro bono activity. Scott Oostdyk presented a business case in support of the proposal; Karl Doss has cultivated support for the proposal at the Virginia State Bar. Commission members discussed the narrow scope of the proposed rule, possible penalties for failure to report, whether the reports would/should be public, the importance of clarity and messaging to lawyers, and the process for approval (initially from the VSB Standing Committee on Ethics). Formal approval from the VSB Access Committee will be sought at its April 20 meeting. The Commission approved the proposal with technical amendments (Justice Goodwyn abstaining). The committee further reported that it continues consideration of proposed amendments to the emeritus rule to facilitate pro bono service by retired members of the Virginia State Bar. Recent amendments to the Judicial Canons will energize support for the local Bench-Bar pilot programs on pro bono service. A past Virginia State Bar proposal that would amend court rules to allow limited scope representation has been resubmitted to the Virginia Supreme Court. Prior to the Court’s consideration, the proposal will be reviewed by the Advisory Committee on Rules of Court and the appropriate VSB committees. The committee is pleased to report that Pete Johnson, new president of the Virginia Bar Association, is including pro bono service in his agenda and that Scott Oostdyk, Commission and committee member, is co-chair of the VBA Pro Bono Council. Lori D. Thompson, Esq., of LeClairRyan (Roanoke) has joined this committee.

In other business, the Commission supported Mr. Whitfield’s plan to pursue a Technology Innovation Grant from the Legal Services Corporation. A letter of intent, if approved with notification in June, would be followed by a full grant proposal. The National Center for State

Courts would handle most of the research, supported by the Office of the Executive Secretary. The Commission would serve as an advisory body during the project. The Commission also discussed the District Court Forms Committee and Circuit Court Forms Committee membership and processes for creating and revising court forms. The Committee on Access for Self Represented Litigants will consider serving as a conduit between the Commission and the forms committees, for the purpose of reviewing forms and recommending changes that may improve access. A letter from the VSB Senior Lawyers Conference to Justice Goodwyn concerning barriers to retired lawyers providing pro bono representation was referred to the Pro Bono Committee.

The next Commission meeting will be held on June 5, 2015, at the Virginia Supreme Court Building. Commission meetings are also scheduled for September 18 and December 10, 2015.