

VIRGINIA ACCESS TO JUSTICE COMMISSION

Quarterly Report to the Supreme Court of Virginia

June 30, 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 second 2015 quarterly meeting of the Commission was held on June 5, 2015 at the Virginia Supreme Court building. A quorum of the Commission was present. At the June 5 meeting, 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.

The Outreach and Education Committee reported on its efforts to develop outreach campaigns designed for three main audiences: the general public, the Bar, and the underserved. Through a partnership with the Community Idea Stations/WCVE, the committee is developing messages to increase awareness among the general public of the need for legal services and to encourage donating to legal aid. A proposal has been developed for a one-year sponsorship of five spots per week, to be run during music, news, and variety programs on Public Broadcasting Service stations in Richmond, Hampton Roads, Charlottesville, and Harrisonburg. The committee reported an estimated discounted cost of \$35,000 for this initiative. The committee is also working with the Community Idea Stations to develop short video public service messages in English and Spanish to be distributed to media outlets that reach the underserved at an estimated cost of \$3,000-5,000 to produce the videos. The Commission approved the committee's proposal to apply to the Virginia Law Foundation for a grant to fund the broadcast outreach projects. The committee also reported on a presentation made at the April 2015 meeting of the Virginia Law Foundation Board relating to the possibility of making sustained funding available to the Access to Justice Commission. It was reported that the Virginia CLE Board has set up a committee to study the matter.

The Outreach and Education Committee also reported that it had formed a subcommittee to work on leveraging committee members' connections with other Virginia groups involved with pro bono service to increase awareness and visibility of the work of the Commission. Additionally, it was reported that Katherine Godin, Vice President of Community Development for The Community Idea Stations, and Karl A. Doss, Director of the Access to Legal Services Committee of the Virginia State Bar, have joined the Outreach and Education Committee.

The Committee on Access for Self-Represented Litigants reported that it has thoroughly analyzed and will compile the results of its survey of trial judges regarding handling pro se parties who appear before them. The committee reported that judges are concerned about self-represented litigants (SRLs) having access to understandable ("plain language") court forms and resources on the Judicial System Website (Website), instructions for judges, the use and need for foreign language interpreters in court, the difficulty that SRLs have with procedural and evidentiary issues, and policies relating to parties' access to electronic devices in court. To address the impact of technology on access to justice, the committee invited Bob Smith, Director, Department of Judicial Information Technology, Office of the Executive Secretary, to its last meeting for an overview of the courts' technological resources. The committee also

reported that the creation of a self-help portal on the Website has been identified as a top priority. It has formed a subcommittee to address improvements in technology. Committee member Deborah Smith of the National Center for State Courts (NCSC) will chair the subcommittee; resources and staff will need to be identified to support this effort. Several committee members attended a Self-Represented Litigant conference recently, and it was reported that unbundling of legal services is a major area of interest nationally and the Committee on Access to SRLs plans to further investigate unbundling of legal services as a possible approach in Virginia.

The Judicial Education Committee reported that it had updated its “Practice Points for Civil Matters Involving Self-Represented Litigants,” a resource for trial judges, to include references to the revised comments on Judicial Canons 3(B)(3) and 4(B) relating to self-represented litigants and pro bono service. The Commission approved the revised practice points for publication in benchbooks and other dissemination to judges. In regards to its ongoing goal to include topics relating to access to justice at every judicial conference, efforts have continued to be fruitful. At the recent May Judicial Conference of Virginia, a panel discussion titled “The Challenges and Ethical Balances to Consider in Advancing the Disposition of Cases Involving the Pro-Se Litigant” was offered at a break-out session, which was both well-attended and received. The committee was pleased to report that Chief Justice Lemons included access to justice as a topic in his State of the Judiciary address. Additionally, new judges received a presentation on “Managing Cases Involving Self-Represented Litigants” at the Pre-Bench Orientation Program this spring. In August, a video module on a related topic will be provided to substitute judges, and a session on “Challenging Self-Represented Litigants” will be held at the Judicial Conference of Virginia for District Courts. The committee reported having reviewed “Recommendations for the Collection of Unpaid Fines and Court Costs,” which was developed by the Office of the Executive Secretary and approved by the Judicial Council to implement recent legislative changes requiring courts to develop written policies that affect many self-represented litigants. The committee plans to stay abreast of this issue and to identify new topics for judicial education from the judge and clerk surveys that have been conducted by the Committee on Access for SRLs.

The Pro Bono Committee reported on its recent efforts to educate Virginia State Bar leaders on the committee’s proposal for a new Rule of Professional Conduct requiring mandatory annual reporting of pro bono activity by all attorneys. Michael W. Robinson, President-elect of the VSB, representative on the VSB Council, and chair of the VSB Standing Committee on Legal Ethics attended the June 5 Commission meeting and commented on the proposal, especially on several changes that may increase the likelihood of its success in receiving approval by the Bar. The committee has also previously discussed the proposal with James M. McCauley, Legal Ethics Counsel at the VSB. Recent changes to the proposal were reported as including (i) making a failure to report pro bono service an administrative rather than an ethical violation; (ii) eliminating a requirement to identify the recipient of a pro bono donation; and (iii) making technical changes to the reporting requirements. The Commission approved the amendments to the draft proposal and the committee’s plans to continue its coordinated communication strategy in educating lawyers on the need for the reporting requirement. The Committee plans to eventually present the proposal to the Standing Committee on Legal Ethics before formally approaching Bar Council. The VSB Access to Legal Services Committee has already considered and approved the proposal for a pro bono reporting requirement.

The Pro Bono Committee also reported on recent activity in its pilot programs to increase pro bono service in the 10th, 25th, 28th, and 31st judicial circuits. Negative feedback on the pro bono reporting proposal was received from a few vocal lawyers at a recent meeting led by Judge

Cunningham in the 10th judicial circuit. Judge Ortiz reported favorably on efforts to coordinate a meeting in the 31st judicial circuit.

Pro Bono Committee members reported that the legal aid organizations of both John Whitfield and Larry Harley have applied for Legal Services Corporation Pro Bono Innovation Grants. Mr. Whitfield's grant would support pro bono efforts in the 25th judicial circuit while Mr. Harley's would (if awarded in September 2015) support similar efforts in the 27th, 28th, 29th, and 30th judicial circuits. Progress was reported by the committee to further grow the Firms in Service Model of pro bono service, which has expanded to 7 regions of the state and benefits from the leadership of several Virginia Supreme Court justices. Scott Oostdyk, Commission and committee member and co-chair of the VBA Pro Bono Council, reported on overlap between efforts of the Commission's Pro Bono Committee and the VBA's commitment to pro bono service.

Regarding old business, Justice Goodwyn updated the Commission on the status of a prior proposal for a rule change to allow unbundled legal services. The proposal, which the Commission believed not to have been reviewed by the Court, was actually formally rejected by the Court in 2006. Thus, there is no proposal pending before the Court regarding the unbundling of legal services. Karl A. Doss, who serves on several committees of the Commission, offered to launch a new unbundling proposal in his capacity as liaison for the VSB Access to Legal Services Committee. Commission co-chair John Whitfield recommended that any rule proposal on unbundling provide for limited scope representation. The status of another prior proposal, authorizing lawyers who are not licensed by the VSB to provide emergency legal services, will be investigated.

In response to a request for comment from the Advisory Committee on Rules of Court, the Commission discussed how a proposed rule regarding identifying lawyers who assist pro se litigants by ghostwriting pleadings could affect access to justice. Some members expressed the thought that a requirement to disclose would have a chilling effect to providing this service and that disclosure without the author of the pleading becoming "counsel of record" would not necessarily be helpful to the court. Questions were raised about how such a rule would be administered. The matter will be placed on the September Commission meeting agenda for further discussion.

On the subject of strategic planning, the Commission gave approval for staff to submit a Technical Assistance grant application to the National Center for State Courts to cover the fees and expenses of engaging a consultant to assist in creating a more thorough strategic plan. Goal setting and infrastructure building, including staffing, were discussed as important elements of strategic planning. Also, the Commission discussed the possibility of using its December meeting date as a day-long retreat for strategic planning, if the NCSC application is approved. The Commission also decided to invite Buck Lewis, who has worked with the Tennessee Access to Justice Commission, to the Commission's September meeting.

Regarding membership, Justice Goodwyn announced the retirement and resignation from the Commission of Paul D. McWhinney of the Virginia Department of Social Services and invited Commission members to recommend a replacement member. Two Commission members now serve in different positions from the slots for which they originally were appointed to the Commission: Daniel E. Ortiz was appointed to serve as an "attorney at large" and is now a circuit court judge; Andrea Bridgeman was appointed to serve in a position designated for a member of the VSB Access to Legal Services Committee and no longer serves on that

committee. In accordance with the September 13, 2013 Virginia Supreme Court order establishing the Commission, the Chief Justice invited both of these members to complete their terms, and both agreed to do so.

Initiatives in which third year law students and pro bono lawyers provide legal services (assisting with wills, advance directives, child custody, etc.) to individuals receiving medical care in hospitals was discussed. The Cancer Pro Bono Legal Clinic Project coordinated by legal aid in North Carolina is an example, and UVA Law School runs a similar project.

The next Commission meeting will be held on September 18, 2015, at the Virginia Supreme Court Building at 12:30 p.m.