

VIRGINIA ACCESS TO JUSTICE COMMISSION

Annual Report to the Supreme Court of Virginia

December 30, 2016

The Virginia Access to Justice Commission (“the Commission”) submits this report in accordance with the order entered by the Supreme Court of Virginia on September 13, 2013 which established the Commission (“the Order”). The Order required quarterly reports on Commission progress during the first two years of the Commission’s existence. Thereafter, the Order requires that the Commission report on its progress at least annually. The Commission has submitted quarterly reports during the first two years of its existence. The Commission now submits this report as its first annual report to the Supreme Court of Virginia.

I. Meetings, Membership, and Staffing

In 2016, the Commission met four times: March 18, 2016; June 23, 2016; September 16, 2016; and December 8, 2016.

The terms of appointment for Commission members George H. Hettrick and the Honorable Joel C. Cunningham expired on November 30, 2016. Additionally, the Honorable Stephen R. McCullough, the Court of Appeals representative, resigned as a Commission member upon his election to the Supreme Court. Both Mr. Hettrick and Justice McCullough will continue their participation as members of Commission committees. Judge Cunningham has retired from the bench. The Commission is deeply grateful for the service of these three gentlemen, each of whom served on the Commission since its inception.

Five members of the Commission were reappointed by the Chief Justice to serve three year terms from December 1, 2016 until November 30, 2019. They are Andrea L. Bridgeman, Gail Warren, the Honorable Daniel E. Ortiz, Mark D. Braley, and Stephen Otero.

Five new members were appointed to the Commission in 2016. The new members, and the date that their terms will expire, are: Karl A. Doss, the Director of Access to Legal Services for the Virginia State Bar (“VSB”) (December 31, 2019); the Honorable Chaz W. Haywood, Clerk of the Circuit Court of Rockingham County (December 31, 2018); the Honorable Mary B. Malveaux, Judge of the Court of Appeals of Virginia (December 31, 2018); Lonnie D. Nunley, III, a partner at Hunton and Williams and chair of the VSB Access to Legal Services Committee (November 30, 2019); and Ray White, Executive Director of the Virginia Law Foundation (“VLF”) (November 30, 2019).

In September, 2016, the Office of the Executive Secretary hired Maggie Mills as the Executive Administrative Assistant for the Commission. She is the first full-time staff person who has been designated exclusively to serve the Commission.

II. Amendments to the Commission's Rules of Operation

Two amendments to the Virginia Access to Justice Commission Rules of Operation were adopted at the Commission's meeting on March 18, 2016.

Rule of Operation 1 (c), related to participation in Commission meetings, was amended to provide: "A member may participate in a meeting in person or, upon the approval of a co-chair, by electronic communication."

The second amendment clarified the rules for quorum and voting requirements at committee meetings. Rule of Operation 4 (e) was amended to provide:

A quorum of not less than one-half of the members of the committee shall be necessary to decide on a recommendation/resolution to be presented to the Commission. Such a decision shall be made by majority vote of the committee members participating in the meeting.

III. Initiatives and Accomplishments

In 2016, the Commission retained the structure of its existing committees: Access for Self-Represented Litigants; Judicial Education; Outreach and Education; and Pro Bono. Additionally, a new Pro Bono Coordinating Consortium committee was formed in 2016.

The Commission devoted most of its December 10, 2015 meeting to strategic planning and setting priorities to pursue in 2016. The Commission and its committees either have accomplished, or have made significant progress towards accomplishing, their goals for 2016.

A. Self-Represented Litigants

Entering 2016, the Commission set two main priorities for the improvement of legal services for Self-Represented Litigants ("SRLs"): (1) to develop a comprehensive set of user-friendly online access to justice resources, and to make them accessible through a Web portal designed to assist SRLs and to facilitate provision of pro bono services; and (2) to improve the design and use of court forms by using plain language in the forms and developing plain language form instructions.

A key element of the first priority has been accomplished. The Virginia Judicial System Court Self-Help website for SRLs was developed and is now available for use at <http://selfhelp.vacourts.gov>. This website was created using an open source website management system. The subscription fee for the website is paid out of the State Law Library budget. Much of the background work in preparing the site for eventual public use was done by Gail Warren, State Law Librarian. This work included collaborations with the OES Department of Judicial Information Technology and the OES Department of Legislative and Public Relations regarding technical and content issues; and, the acquisition of requisite approvals from the Supreme Court to make the website public and post links to it on the Judicial System website.

The website became available for public use on June 13, 2016. The website averages over 1,500 “hits” each month. While the Commission has not yet fully developed a comprehensive set of resources for SRLs, refinement and improvement of the website are ongoing (see discussion below regarding the second priority). The website emphasizes case types that frequently involve SRLs as litigants. It utilizes information from, and links to, various sources, including those that already were available on the Judicial System website. It also links to the VSB’s legal access website Virginia.freelegalanswers.org.

With regard to the second priority, the Commission has determined that the public’s difficulty in using many of the court forms in use across the Commonwealth is an access to justice issue. Improvement in this area includes “plain language” revisions to court forms, and better form instructions. The Commission’s SRL Committee is designing a guided interview for use in filling out the most problematic forms as identified by clerks of court. This is a test project that will identify the problems that SRLs have with the forms, and will provide guidance in determining the changes that may be needed to make the forms more user friendly for SRLs. The SRL Committee will evaluate forms from the General District Courts (the Warrant in Debt and Tenant’s Assertion forms); the Juvenile and Domestic Relations District Courts (the Motion to Amend and the Waiver of Fee forms); and the Circuit Courts (Application for Change of Name and the Change of Name Order forms). Improvement of court forms are planned to eventually include the development of online video tutorials and interactive form completion software similar to TurboTax for various types of litigation (accessible by computer and smart/mobile devices).

As an additional initiative, the SRL Committee is gathering information and working to develop a proposed uniform policy for the possession and use of cell phones in the courts of the Commonwealth. Currently, there is no uniform policy among the courts and judges of the Commonwealth regarding whether people can bring their cell phones into courthouses and courtrooms. Common uses of cell phones in our society include their use as computers, calendars, and storage devices for digital evidence. Many courts allow lawyers to bring their cell phones, computers, and electronic devices into the courts. This places SRLs at a disadvantage, as they may store all of their evidence and case preparation materials on their cell phones, only to be denied access when they arrive at the courthouse.

B. Judicial Education

Two priorities were established for educating the judiciary about access to justice issues and resources: (1) to change court system mindsets with respect to providing assistance to self-represented litigants; and (2) to teach judges the best practices for working with self-represented litigants in the adjudicative process.

Through the efforts of the Judicial Education Committee, an access to justice topic has been included on the agenda for every mandatory judicial conference in the Commonwealth held in 2016. There was a presentation on the Commission’s work at the Judicial Conference of Virginia for District Courts in September (“the September Conference”). There also was a presentation and discussion concerning the collection of court costs and fines, and the existing statewide inconsistency in the use of payment plans. The Commission has been concerned that

practices related to the collection of court costs and fines disproportionately affect citizens with lower incomes. The Supreme Court recently adopted a new rule that addresses the issue. Effective February 1, 2017, Va. S. Ct. R. 1.24 will require that all courts offer and approve deferred and installment payment plans pursuant to Va. Code § 19.2-354.

The Commission is working to develop poverty simulation seminars. The goal of the seminars will be to sensitize judges, clerks, and other members of the court system to the realities of poverty and the associated need for improvements in access to justice for the poor. The Commission will determine the appropriate venue for these simulations as part of the seminar development process.

The Commission has developed Practice Points for Civil Matters Involving Self-Represented Litigants (“the Practice Points”), which provide guidance to judges in matters involving SRLs. The Practice Points were included in the materials provided to judges at the Judicial Conference of Virginia in May, and at the September Conference. The Chief Justice referenced the Practice Points in his State of the Judiciary address for both conferences. The Practice Points include references to provisions in the Canons of Judicial Conduct (“the Canons”) which allow judges to inform SRLs about free legal aid and to encourage lawyers to provide pro bono service. The Practice Points will be updated to reflect the amendments to the Preamble, the addition of Canon 4C, and additional Commentaries added to the Canons which were adopted by the Supreme Court by Order entered November 2, 2016 (see further discussion under the Pro Bono section below).

As a means of continuing to promote the Practice Points, the Commission is considering the development of a webinar which would emphasize the Practice Points and the recent revisions to the Canons.

C. Outreach and Education

The Commission has developed three priorities regarding outreach and communication: (1) to develop a comprehensive, long-term public outreach plan for the Commission, perhaps eventually integrating it with a larger civic education/communication plan that the court system needs to develop for itself; (2) to increase awareness among members of the bar regarding Rule 6.1 of the Rules of Professional Conduct (Voluntary Pro Bono Publico Service); the need and opportunities for pro bono; and, the importance of collecting data regarding pro bono service; and (3) to solicit the commitment of the judiciary, particularly the Supreme Court, both individually and as a body.

In working to accomplish these priorities, the Commission’s Education and Outreach Committee is working to develop a series of symposia or public meetings that would receive input from and provide information to the legal profession, the legislature, and the public regarding access to justice problems and solutions. These symposia would also serve to educate people about the benefits of providing pro bono legal assistance. A potential target date may be fall, 2017, coinciding with the anniversary of the Commission’s formation.

A “graphic identity” is being developed through the use of flyers and other media. This effort will include a logo and a branding/public information strategy that is currently under development.

As part of the Commission’s ongoing communication efforts, public service announcements ran on WCVE radio through December 16, 2016.

The Outreach and Education Committee made three presentations to the VLF Executive Committee regarding the Commission’s work. A presentation was made before the VLF Board of Directors regarding the possibility of developing a permanent funding plan for the Commission. At the 2016 VSB Annual Meeting, a presentation was made to the VSB Corporate Counsel Section about the Commission’s Goals and Objectives.

The Commission is pleased that the Supreme Court has demonstrated a clear commitment to improving access to justice for all citizens of the Commonwealth. Examples of this commitment include the adoption of Rule 1.24 and the various amendments to the Canons that emphasize judicial promotion of pro bono service. Additionally, the Chief Justice’s Pro Bono Summit was held in April 2016, and is further demonstration of the Supreme Court’s leadership in this area.

D. Pro Bono

The Commission’s priorities to increase and enhance pro bono public service for indigent Virginians continued to be focused on: (1) securing the adoption of rule changes that would require mandatory annual reporting by VSB members of pro bono service hours and legal aid contributions; and (2) coordination of pro bono training, recruitment, deployment, and associated activities of such groups as the VSB and certain of its sections and conferences, the Virginia Bar Association (“VBA”), local bar groups and specialty bars.

Considerable effort was devoted to promoting the adoption of the proposed rule changes for mandatory reporting under Rule 6.1 of the Rules of Professional Conduct. The proposed rule changes have the support of legal aid groups across the Commonwealth, a number of law firms, as well as the VBA Board of Governors, VBA Pro Bono Council, the VSB Access to Justice Committee, the VSB Young Lawyers Conference, the Virginia Trial Lawyers Association, and the Old Dominion Bar Association. In its meeting on October 7, 2016, the VSB Council voted not to endorse the proposal. The vote was 29-25, with 27 VSB Council members not in attendance. The Commission will submit the proposed rule changes and an accompanying report to the Supreme Court for consideration.

The Pro Bono Committee has also focused the Commission’s attention on perceived constraints arising from some interpretations of language in the Canons that may inhibit judges from becoming more actively involved in promoting pro bono efforts. While the Supreme Court had adopted some helpful comments incorporated into the Canons in early 2015 addressing these issues, some concerns remained. Therefore, additional revisions to the Canons in 2016, adopted by the Supreme Court and incorporated into the Canons in November 2016, will be extremely

helpful. These changes should provide clear guidance to Virginia’s judiciary regarding their ability to promote pro bono work.

The VBA Pro Bono Council, working with the Greater Richmond Bar Foundation, is developing a prototype “triage project” to better integrate public and private legal resources and to improve the delivery of legal services to lower income clients. The Commission will report on this project, and may recommend the statewide expansion of this public-private model, at the Pro Bono Summit in 2018.

The Commission is developing a proposed amendment to the Rules of the Supreme Court of Virginia that would allow for “unbundling,” or limited scope representation of clients by lawyers, especially in the area of family law. The goal is to allow lawyers to represent indigent clients in limited circumstances, rather than the current practice in which a lawyer who makes an appearance for a client may be required to continue the representation in additional related hearings that may occur over the course of years.

E. Pro Bono Coordinating Consortium

To facilitate the coordination of pro bono services among a variety of organizations, the Pro Bono Coordinating Consortium committee (“the Consortium”) was formed and began meeting in 2016. The purpose of this new committee is to facilitate information sharing and collaboration among pro bono service providers and supporting groups throughout the Commonwealth. The Consortium has 35 participants. The Consortium has developed a “listserv” email list to make information on pro bono service opportunities available to Virginia lawyers.

One project being studied by the Consortium is the possible development of a Faith and Justice Initiative patterned after a similar program developed by the Tennessee Access to Justice Alliance. The purpose of such an initiative would be to train and educate faith communities to recognize legal needs that may arise among people that they serve, and to direct those people to available pro bono legal assistance providers. Lawyers within the particular faith communities would be mobilized to participate in meeting the pro bono needs that are identified.

Another noteworthy development is that the committee that plans the VSB Annual Meeting has approved a CLE seminar related to access to justice for the 2017 Annual Meeting. The seminar will include presentations on the “justice gap”; the work of the Commission; and pro bono service opportunities for lawyers across the Commonwealth. The seminar carries the endorsement of all four of the VSB Conferences: the Young Lawyers Conference, the Senior Lawyers Conference, the Diversity Conference, and the Conference of Local Bar Associations. The final outline for this seminar will be submitted to the VSB for final approval soon.

V. Conclusion

Calendar year 2016 has seen the Commission grow in its influence, and in its positive impact on improving access to justice for all citizens of the Commonwealth. With the projects that are under way or in the development stage, 2017 should be a year of similar progress.

The Commission's meetings in 2017 are scheduled to be held on March 3 at 1:00 p.m.; June 9 at 1:00 p.m.; September 15 at 1:00 p.m.; and December 7 at 10:00 a.m. All meetings will be held at the Virginia Supreme Court building.