

VIRGINIA ACCESS TO JUSTICE COMMISSION

Annual Report to the Supreme Court of Virginia

2017

The Virginia Access to Justice Commission (“the Commission”) submits this annual report in accordance with the order entered by the Supreme Court of Virginia on September 13, 2013.

I. Meetings, Membership, and Staffing

The Commission met four times in 2017: March 3; June 9; September 22; and December 7.

Chief Justice Donald W. Lemons reappointed three members of the Commission to serve three-year terms (from December 1, 2017 until November 30, 2020): the Honorable S. Bernard Goodwyn, co-chair; Mr. John Whitfield, co-chair; and the Honorable Tonya Henderson-Stith, Chair, Judicial Education Committee.

Ellen Bowyer began working as the Staff Attorney and Administrator for Commission in September 2017. She is the first full-time attorney designated exclusively to staff the Commission.

II. Amendments to the Commission’s Rules of Operation

At its meeting of March 3, 2017, the Commission adopted amendments to Rule of Operation 4 (c) to clarify that the terms of service of committee members expire on November 30 of their second year of service:

Terms

Excluding members of the Pro Bono Coordinating Consortium, committee members who are not Commission members shall be appointed to two- year terms and shall be eligible for reappointment to additional two-year terms at the discretion of the committee chair. (Adopted 12/10/15; amended 3/3/17). For purposes of calculating committee terms and scheduling reappointments:

- i. the terms of all non-Commission members appointed to serve on committees prior to December 10, 2015, shall be deemed to have

commenced as new terms on that date and shall expire on November 30, 2017;

ii. the terms of all non-Commission committee members appointed to serve on committees after December 10, 2015, shall be deemed to have commenced on December 1 of the year in which they were appointed, with terms expiring on November 30 of their second year of service;

iii. Commission members whose membership on the Commission concludes may continue to serve on Commission committees as non-Commission members should they desire to do so. If so, their committee terms shall be deemed to have commenced the year when their status as Commission members concluded.
(Rule 4 (c)(i), (ii), (iii) adopted 3/3/17)

At its meeting on September 22, 2017, the Commission amended Rules of Operation 1 and 4 by adding new subparagraphs addressing participation, as follows:

1. Meetings

d. Attendance

If a member of the Commission fails to participate in four consecutive meetings of the Commission, the co-chairs in their discretion may request that the Chief Justice remove and/or replace that member of the Commission. (Adopted 9/22/17).

4. Committees

f. Attendance

If a member of a committee fails to participate in four consecutive meetings of the committee, the committee chair in his or her discretion may request that the Commission co-chairs remove that committee member. (Adopted 9/22/17).

III. Initiatives and Accomplishments

The Commission continued in 2017 to operate through its five existing committees: Access for Self-Represented Litigants (“SRL Committee”); Judicial Education; Outreach and Education; Pro Bono; and the Pro Bono Coordinating Consortium. The Commission and its committees have accomplished or made significant progress towards accomplishing their goals in 2017.

A. Self-Represented Litigants

The SRL Committee focused on four goals in 2017: (1) using plain language to improve the design of court forms and instructions, and employing guided interviews to facilitate form completion; (2) making existing materials more accessible, including distributing written materials to court clerks and judges; (3) developing a proposed statewide policy governing the possession and use of portable electronic devices in Virginia's courts; and (4) developing self-help centers. The Committee also made it a priority to complete the report on the 2014 and 2015 surveys of trial court clerks and judges.

Court Forms. The Committee has been examining ways in which court forms may be made more user friendly and accessible to litigants, including the use of a guided interview process. In 2017, the Committee initiated the Virginia Court Form Automation Project under the aegis of the Richmond School of Law, in collaboration with Southwest Virginia Legal Aid Society and Virginia Poverty Law Center, with funding from a Legal Services Corporation (LSC) Technology Initiative Grant (TIG). The Project employs sophisticated automation tools and techniques to enable SRLs to locate and complete court-approved forms. Upon completion, the guided interviews will be accessible through links on the Virginia Judicial System Court Self-Help web portal ("Self-Help Portal").

Existing Materials. To make existing resources more accessible, the Commission at its June 9, 2017 meeting approved recommendations from the SRL Committee related to the posting of Access to Justice posters in clerks' offices and distribution of business cards containing the address of the Self-Help Portal. The Commission also approved recommendations to simplify the title of the Self-Help Portal (from "Virginia Judicial System Self-Help Website" to "No Lawyer? Need Help?") and to add a link to the Self-Help Portal to the Quick Links on the Virginia Judicial System's website.

Model Policy – Portable Electronic Devices. Portable electronic devices – including portable personal computers, tablet computers, mobile telephones (including telephones with cameras and audio and video recording and transmission capabilities), electronic calendars, e-book readers, and "smart" watches—are ubiquitous. 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. At its December 7, 2017 meeting, the Commission unanimously endorsed the Committee's model policy for portable electronic devices, and directed staff to prepare the model policy for transmission to Chief Justice Lemons.

Self-Help Centers. The Committee received a presentation about how a Self Help Center was developed for the 43rd Judicial District Court in Monroe County, Pennsylvania, including the tactical strategies, collaboration, training and physical facilities necessary for effective centers. The Committee intends to continue to work on the concept of piloting Self Help Centers in Virginia courts.

Report on 2014 and 2015 surveys. The Committee conducted a survey of trial court judges in 2014, and of trial court clerks in 2015. The survey findings were instrumental in galvanizing the Committee's work in several areas over the last few years, including developing the Self-Help Portal, assisting in the development and distribution of SRL materials to clerks and judges, and providing training to clerks and judges on issues surrounding SRLs' court appearances. At its November 13, 2017 meeting, the Committee completed the summary report on the survey findings, including recommendations for action. At its December 7, 2017 meeting, the Commission accepted the report, and directed staff to work through the Outreach and Education Committee to arrange for its distribution.

B. Judicial Education

The Committee established two priorities for educating the judiciary about access to justice issues and resources: change court system mindsets with respect to providing assistance to self-represented litigants, and teach judges the best practices for working with self-represented litigants in the adjudicative process. The Judicial Education Committee has taken action to address both priorities in 2017.

Conference topics. An access to justice topic was included on the agenda for every mandatory judicial conference in 2017. There was a presentation on Implicit Bias Awareness at the Judicial Conference of Virginia in May. A presentation on the Virginia Access to Justice Commission, including a detailed discussion of projects by the SRL Committee and an in-depth overview of the Self-Help Portal, were on the agenda for the August District Court conference.

I-CAN! I-Can! is a free online program that provides assistance in the preparation of forms required to file civil protective orders. The Committee is promoting the installation and use of I-Can! terminals and printers in courthouses and libraries.

Practice Points. The Practice Points for Civil Matters Involving Self-Represented Litigants ("the Practice Points"), provide guidance to judges in matters involving SRLs. 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 services, and to encourage lawyers to provide pro bono civil legal service. In 2017, the Practice Points were updated to reflect the amendments to the Preamble, the addition of Canon 4C, and additional Commentaries added to the Canons, all of which were adopted by the Supreme Court by Order entered November 2, 2016. The Practice Points are published in the District Court Benchbook, and the Committee is exploring options for publication in the Circuit Court Benchbook. 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.

Poverty simulation seminars. The Committee also is working to develop poverty simulation seminars that are intended to sensitize judges, clerks, and other members of the court system to the realities of poverty and the need for system improvements to facilitate access to justice for poor people

The Committee recently expanded its portfolio by voting unanimously to address education and training for clerks of court in addition to judges. The Committee will benefit in this endeavor from the appointment of its two most recent members, a clerk from a circuit court and a clerk from a combined court (JDR and District Court).

C. Outreach and Education

The Outreach and Education Committee is responsible for ensuring effective communication by the Commission. Its priorities include developing a comprehensive, long-term public outreach plan for the Commission, increasing awareness among members of the bar regarding the importance of pro bono civil legal service, and soliciting the commitment of the judiciary regarding access to justice issues. It accomplished several related initiatives in 2017.

Development of Commission logo. The Committee developed a logo for the Commission, which included the tag line “Promoting Equal Access to Justice in Virginia.”

Development of self-help materials for distribution to and by clerks and judges. The Committee developed multiple print resources to assist SRLs and the public in general, including cards and bookmarks that promote the use of the Self-Help Portal, and posters that explain the kind of legal information court clerks can provide, as opposed to legal guidance which they cannot provide. All of these print resources are available in English and Spanish translations. The resources were distributed to district court clerks at the District Court Clerks Conference in May 2017, by a direct mailing in September 2017, and to circuit court clerks at the Circuit Court Clerks Association conference in September 2017.

Presentations. Commission Co-Chairs Justice Goodwyn and John Whitfield and Commission member Karl Doss made major presentations regarding access to justice issues in Virginia, and the work of the Commission, at the Virginia State Bar’s annual meeting in Virginia Beach in June 2017, and at the Virginia Bar Association’s summer meeting at the Homestead in July 2017.

Videos. The Committee has worked with the Virginia Law Foundation as it planned a series of six videos, depicting lawyers who have offered and clients who have received pro bono assistance, along with commentary from others involved in the legal community.

The Committee assisted the Foundation in redirecting the focus of the videos to the lawyers providing the pro bono civil legal assistance, so as to allow the full import of the stories to be told, while preserving the privacy of the clients.

Communications strategy. The Committee has requested that the Commission seek funding for development of a communications strategy for the Commission, and will oversee that process if funding is awarded.

D. Pro Bono

The Commission's priorities to increase and enhance pro bono public service for indigent Virginians focused on securing the adoption of rule changes that would require reporting of pro bono service hours and legal aid contributions, allow lawyers to represent clients on discrete matters, and increase the number of lawyers eligible to provide pro bono service.

Proposed rule on mandatory pro bono reporting. The Committee promoted the adoption of 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, and several law firms, as well as the VBA Board of Governors, VBA Pro Bono Council, the Virginia State Bar Access to Justice Committee, the Virginia State Bar Young Lawyers Conference, the Virginia Trial Lawyers Association, and the Old Dominion Bar Association. In its meeting of October 7, 2016, the Virginia State Bar Council voted 29 to 25 against endorsing the proposal; 27 Council members were absent.

The Commission recommended Supreme Court approval of the proposed rule changes via a May 29, 2017 letter from Commission co-chair John Whitfield to Chief Justice Lemons (Justice Goodwyn abstained from discussing or voting on the matter). The Supreme Court denied the Commission's request regarding mandatory reporting by letter from Chief Justice Lemons dated September 29, 2017. However, the letter from the Chief Justice stated, "The Court would favorably consider a proposal that provides lawyers with a mechanism to voluntarily share information about the services they provide." The Commission approved a proposal for voluntary reporting at its December 7, 2017 meeting, and directed staff to arrange for transmission of the proposal to Chief Justice Lemons.

Proposed rule on unbundling. At the request of the Pro Bono Committee, the Commission recommended that the Supreme Court approve proposed amendments ("Unbundling Rule proposal") to Va. S. Ct. R. Part One, Rule 1.5. If approved, the amendments would allow attorneys to make limited appearances in civil proceedings by written agreement between attorney and client, upon filing and service of required notices with the court and opposing counsel/parties. The purpose is to encourage greater representation of indigent clients than now, when a single appearance may obligate an attorney to continue the representation on additional related matters. The Supreme Court referred the proposal to the Advisory Committee on Rules of Court, which is a Committee of

Judicial Council. The Advisory Committee has issued for public comment a draft of a new subpart F to Rule 1.5, and has requested comment by March 1, 2018. At its meeting of December 7, 2017, the Commission referred the Advisory Committee's draft to the Pro Bono Committee for review and preparation of the Commission's response.

Proposed amendments to emeritus rule. The Pro Bono Committee also was extensively involved in the proposed amendments to Va. S. Ct. R. Part Six, Section IV, Paragraph 3 ("Emeritus Rule"). The amended rule would authorize emeritus members (as specifically defined within the Rule) to provide pro bono services without direct supervision of a supervising attorney so long as they annually certify their affiliation with a Qualified Legal Services Provider. The proposed amendments were posted on the Virginia State Bar website for public comment from May 23, 2017 through June 30, 2017. The Council of the Virginia State Bar unanimously approved the amendments on October 27, 2017, and the Virginia State Bar petitioned the Supreme Court on November 1, 2017, requesting its review and approval of the proposed amendments.

Pilot Circuit-based Pro Bono Initiative. Since 2014, the Pro Bono Committee has been considering how to use a partnership among the judiciary, local bar leaders, and legal aid to encourage greater involvement by the bar membership in organized pro bono referral programs. In December 2016 Chief Justice Lemons asked the chief judges in the 25th Judicial Circuit to undertake a pilot project involving such a partnership. During 2017, the chief judges met with each of the local bar associations to encourage their pro bono involvement, followed by a recruiting drive by Blue Ridge Legal Services ("BRLS"), the legal aid society that serves the 25th Judicial Circuit. This recruiting drive concluded in December 2017, with excellent results: over 84 percent of the practicing attorneys in the 25th Judicial Circuit have now agreed to participate in BRLS's pro bono referral program. This pilot project demonstrates that the judiciary can play a powerful role in encouraging pro bono on a local level.

E. Pro Bono Coordinating Consortium

The Pro Bono Coordinating Consortium committee ("the Consortium") continues to focus on facilitating information sharing and collaboration among pro bono service providers and coordinating pro bono training, recruitment, deployment, and associated activities of the Virginia State Bar and certain of its sections and conferences, the Virginia Bar Association, local bar groups and specialty bars. The Consortium has accomplished initiatives in four key areas.

Pro bono database. Consortium members continue to submit forms to update VaLegalAid.org so as to ensure that the information is comprehensive and correct.

Shared calendar. The Consortium has developed a shared calendar and each of the Consortium members has been contributing information, with the use of the calendar increasing as members become more familiar with it.

Distribution of the “Access to Justice: Free and Low Cost Legal Resources in Virginia”. The Virginia State Bar printed 100,000 copies of the pamphlet, and the Consortium is developing a distribution plan.

New areas of collaboration. The Consortium maintains information on its various partners. Most recently, for example, Legal Services in NOVA received \$290,000 for veterans, and Virginia is number one in the United States relative to response rates on FreeLegalAnswers, having an attorney response rate of 94 percent.

F. Strategic Planning

At its meeting of December 8, 2016, the Commission directed each of the Committees to develop a strategic plan. The Commission reviewed those plans at its June 9, 2017 meeting. At that same meeting, the Commission established a Strategic Planning Retreat Committee, which was directed to address three questions relative to a strategic planning session for the Commission: (1) Who should participate? (2) When should the retreat take place? (3) Should the Commission find an outside facilitator, or should one or more Commission members facilitate the retreat?

The Committee’s preliminary recommendation, reported at the Commission’s September 22, 2017 meeting, is that the Commission should engage in a phased-in approach to strategic planning that provides for stakeholder participation but limits involvement in the retreat to Commission members. The retreat would be used to review existing strategies, identify new strategies, allocate resources, and assign actions with deadlines that are specific and measurable. Using an outside facilitator will allow greater participation by all Commission members and staff; however, in light of the lack of funding, the Committee did not reach a final decision as to that question. The timing of the retreat similarly depends in part on when funding is obtained. As context for her report, Committee Chair Warren noted that the Commission does not at this time have a strategic plan; instead, it has identified goals and priorities.

Consistently with the Committee’s recommendation, Commission staff plan to undertake a one-hour strategic planning session at each of the 2018 Committee and Commission meetings. The Committees each will develop mission statements, goals and objectives, and a one- to two-year strategic plan. In their final meetings of 2018, the Committees will review the plans and identify next steps. At its final meeting of 2018, the Commission will review its strategic plan and identify next steps.

Importantly, all of the strategic planning for the Commission and Committees will build on the priorities, goals, and objectives that already have been discussed. The aim of the strategic planning is to organize this information and put it in a consistent format that the Committees and Commission can easily use to direct future action and strategic

decisions. In 2019/2020, the Committees and Commission may choose to undertake more comprehensive planning covering a longer time period.

IV. Conclusion

The Commission has continued to make significant advances in 2017. With the addition of dedicated staff in September 2017, the Commission has the opportunity to survey what it has done to date, what it needs to prioritize in the future, and how it needs to structure its work for maximum impact.

The Commission's 2018 meetings are scheduled to be held on March 12 at 10:00 AM; June 8 at 1:00 PM; September 14 at 1:00 PM; and December 6 at 10:00 AM. All meetings will be held in the Richard P. Kern Memorial Conference Room at the Virginia Supreme Court building at 100 North Ninth Street, Richmond, Virginia.