

SPECIAL COMMITTEE ON ACCESS TO LEGAL SERVICES

Robert J. Stoney, Chair

Enhancing the Litigation Skills of Pro Bono and Other Public Interest Attorneys

Last summer, the Access to Legal Services Committee surveyed prior attendees of its earlier pro bono conferences, and the bar in general, (through its Web site) to identify future training topics. More than 50% of the replies checked enhancement of “litigation skills.” Another popular request was for Supreme Court of Virginia-approved continuing legal education for GALs (guardians-ad-litem).

The committee sponsored two major CLE initiatives this year. The Pro Bono Conference in May, held in conjunction with the Virginia Public Defender Commission’s Juvenile Law Seminar, included a session on mediation in special cases for GALs. In March, the committee offered a seminar on trial skills for public interest lawyers, in conjunction with Virginia Fellows of the American College of Trial Lawyers. As many traditional legal aid programs husband scarce resources by focusing on brief service, advice and self-help tools, the bar must prepare more pro bono and public interest attorneys to fill gaps in critical legal services through training that refines their comfort level in courtroom and like settings.

Virginia Pro Se Initiative

In September of 2001, considering the profound impact the deluge of pro se litigants was having on the administration of justice, then-Chief Justice Harry L. Carrico formed a Pro Se Litigants Planning Committee to review policies, practices and protocols for Virginia’s court system to use when handling cases brought by self-represented parties. The study committee, chaired by Justice Elizabeth B. Lacy, presented a report with 18 recommendations.

Of the 16 recommendations endorsed by the Judicial Council of Virginia, one encouraged the Virginia State Bar’s Standing Committee on UPL to consider drafting a new rule covering the scope of permissible assistance by court personnel to self-represented litigants. The proposed rule drafted by the UPL Committee is expected to again come before the VSB Council in October.

Consistent with another recommendation, and also at the request of the court’s executive secretary, the bar’s Access to Legal Services Committee formed a Limited Representation Committee. It will explore the feasibility of delivering affordable civil legal services through limited scope assistance—known as discrete task representation and/or unbundling. Included in the Court’s 2002 report were directives to seek input from other statewide bar organizations, local bar associations, specialty bars, professional liability insurers and the judiciary.

The *2002 Pro Se Report* cited the following examples of discrete tasks that might be selected by lawyers and clients in determining the scope of services: advice; legal research; fact gathering; discovery; negotiation; document preparation; and in-court representation.

The Court’s *Pro Se* Committee concluded that Rule 1.2 of the Rules of Court (scope of representation) contemplated unbundling. However, by expanding comments to the rule, the report’s authors suggested that the rule’s intention to sanction unbundled services could be clarified to permit its reconciliation with non-conforming and inconsistent existing case law and ethics opinions.

At the May Pro Bono Conference, the Access Committee’s Limited Representation Committee heard presentations on several topics related to limited-service legal representation. Various groups and members of the private bar currently involved in discrete task and community legal education activities valuable to pro se litigants commented on the following: legal aid and state agency legal advice and information hotlines; Internet access to court forms and use of legal aid prepared-and-attributed pro se pleadings and full-disclosure instructions; statewide voluntary bar and other not-for-profit limited-assistance lawyer referral plans; law firm-sponsored community education clinics and unbundled community mediation services; local bar-sponsored brochures for pro se litigants; and other local bar and public library-sponsored segmented services and legal malpractice insurance options.

The committee expects the entries in Immediate-past President Ben DiMuro’s directory of local and statewide bar association charitable and public service programs (*Legally Informed*) to be an important resource as it catalogues additional examples of community legal education efforts and other unbundled services for the fall report it prepares for the court.

At the bar’s annual meeting in June, Legal Services of Northern Virginia (LSNV) staffed a booth in the EXPO hall showing attorneys how they and their clients could download free fill-in-able court forms from the LSNV Web site. As another aid to pro se litigants and legal aid clients seeking to become better informed, Blue Ridge Legal Services and

the Virginia Poverty Law Center jointly sponsor an Internet-based legal consumer education site, www.VaLegalAid.org, to help citizens locate information about select legal services programs and popular substantive poverty law topics. VSB links to the site from its home page and access/pro bono Web pages.

VSF Filing of Amicus Brief in Support of New Ruling on Unbundled Legal Services

As noted above, although Rule 1.2 not only contemplates the unbundling of legal services in Virginia, existing ethics opinions and court decisions tend to confuse the issue. As the Access Committee considers recommending language for new comments to the rule, it has requested and received from the council, agreement for the bar to seek the Virginia Attorney General's assent for bar intervention through an amicus brief on behalf of a then-pro se party who was denied permission by a local circuit court to proceed as a self-represented litigant. The party's intermittent counsel disclosed the nature of the mutually agreed-to limited services, but the court said that document and filing fee tenders to the clerk of court were an appearance and therefore inconsistent with the type of restricted lawyer/client relationship being alleged.

Limited Practice Certificates for Military Lawyers and Cooperation with the ABA LAMP Program

The committee welcomed attorneys stationed at military legal assistance offices (LAOs) in Virginia to the March trial skills seminar. Thanks to the Corporate Counsel Section, the program was videotaped and will be available, at a nominal charge, to members of the public interest bar and to additional legal assistance office attorneys admitted under Virginia's new [Military] Limited Practice Certificate program. The bar will continue, under the ABA's LAMP program, to recruit, train and refer pro bono attorneys to assist members of the National Guard and Reserves and their dependents for civil legal help when prospective clients have formal referrals from base commanders or LAOs documenting their eligibility. See www.vsb.org/probono for more information.

Statewide Licensed Legal Aid Programs—An Update

With the active engagement and leadership of Congressman Frank R. Wolf, appropriations for civil legal services programs through the national Legal Services Corporation appear to have stabilized. Also, despite anticipated drops in IOLTA receipts due to declines in bank interest rates, state support for grantees of the Legal Services Corporation of Virginia (LSCV) has likewise stabilized, due to last year's implementation of the extra dollar per civil case increase in state court filing fees now dedicated to LSCV.

The committee notes that it has received input from one of the rural licensed legal aid societies in support of more targeted funding for extended (i.e., in-court, etc.) representation of low-income clients in critical legal matters.

Funding for Legal Services—Exploratory Dues Check-off Proposal

In an exploratory meeting, the chair of the Access Subcommittee on Funding Alternatives and several bar leaders consulted with members of the Supreme Court of Virginia during one of the court's regular business meetings. The committee sought preliminary feedback on its proposal to include a voluntary check-off on the bar's dues statement to benefit legal services programs. Judges are precluded in Virginia (unlike the Texas model for this type of initiative) from involvement in direct fundraising through endorsement letters, etc. Accordingly, the committee was encouraged to use a more appropriate forum, and in this case, to bring its proposal before the executive committee and then the bar council if, after further consideration, it continues to believe in the concept's viability.

Review of Regulations Governing Licensed Legal Aid Societies

During the coming bar year, the committee expects to review in some detail (with comments invited along the continuum of interested parties) and to make recommendations on revisions to the regulation governing the licensing of civil legal aid societies in Virginia.

2002 Awards

The committee selected indigent defense counsel and Senate Courts of Justice pro bono staff attorney Steven D. Benjamin to receive the 2003 Lewis F. Powell, Jr., Pro Bono Award. Renae Reed Patrick, managing attorney at the Lynchburg office of Virginia Legal Aid Society, received this year's Virginia Legal Aid Award. University of Virginia graduating law student Angela Ciolfi received the Oliver W. Hill Law Student Pro Bono Award. The Honorable James W. Benton, Jr., Court of Appeals of Virginia, and the Honorable Timothy M. Kaine, Lt. Governor of Virginia, were, respectively, the guest speakers for the May Pro Bono and June Legal Aid Award events.

Exploring Common Ground between Indigent Defense and Civil Access Advocates

The National Legal Aid and Defender Association (NLADA) is a nongovernmental organization that has been in the forefront of providing malpractice insurance coverage in civil matters to bar associations, pro bono groups and

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legal services programs representing low-income, modest means and “working poor” clients and the nonprofit groups that serve them.

At the national level, NLADA encourages the civil and criminal defense bars and their lawyer constituents to consider ways in which both communities can cooperate to address overlapping needs of poor and modest-means clients. Adapting this national agenda to access to justice concerns at the state level, several areas of interest were brought to the committee’s attention this past year. They included reforms to the juvenile justice system and questions of parity for prison inmates who are housed in county jails and who seek, but apparently are not eligible for, criminal case legal research assistance through the DCJS itinerant appointed-attorney program.

