

SPECIAL COMMITTEE ON ACCESS TO LEGAL SERVICES

Glenn C. Lewis, Chair

This report on the committee's activities is prepared and submitted, as contemplated in the mission statement of the Special Committee on Access to Legal Services.

General Assembly Funding for Civil Legal Services

The Access Committee thanks the bar council and then-VSB President Joseph Condo respectively, for adopting and promoting the resolution opposing restrictions on state funding for Virginia's legal aid societies. Adopted on the committee's request at the October meeting of the bar council, the resolution's language was thereafter adopted by a number of other bar associations. The resolution accompanied communications to state legislators from the VSB, the ABA Young Lawyers Division and others.

The resolution anticipated two measures introduced in the 2001 Virginia General Assembly session that sought to attach certain restrictions governing national Legal Services Corporation (LSC) grantees to state funds appropriated for grantees of the Legal Services Corporation of Virginia (LSCV). As introduced, the proposed legislation would have required disclosure of confidential client information. It further sought to prohibit LSC grantees from serving certain classes of indigent clients and from utilizing the full-range of litigation tools available to paying clients of private attorneys.

Through an intense period in late January, LSCV Executive Director Mark Braley worked to strike a compromise with HB 1942 proponents. This resulted in an agreement to withdraw the bill, along with companion restrictive language to be added to a budget amendment. As a condition of this agreement, LSCV agreed to terminate funding of grantees representing H2-B migrants in employment cases. Mr. Braley will continue to inform us on related developments as they occur.

Promotion of Signatory Status on Amicus Brief

You will recall that the committee requested and secured bar council approval for the VSB to join as *amicus* on the appeal brief submitted in *U.S. v. Legal Services for New York City*, pending at the time in the United States Court of Appeals for the District of Columbia Circuit. Following bar council's vote, a final version was approved by chair and then-VSB President Condo, who forwarded the brief to the Office of the Virginia Attorney General (OAG). As requested by the president, OAG gave final approval to our participation as an *amicus*, and Mr. Condo signed the brief in behalf of the bar. The *amicus* brief was prepared by the Brennan Center for Justice at New York University Law School. It contested actions by the inspector general of the national Legal Services Corporation, requiring that LSC grantees disclose confidential client information, in the form of client names and problem codes.

The case was decided May 25, 2001, and is now reported at 249 F.3d 1077 under the caption "For Educational Use Only." The appeals court affirmed the district court's (D.C.) granting of the LSC Inspector General's petition for summary enforcement of an administrative subpoena compelling production of two sets of client data on 1999 closed cases. Amici argued, consistent with appellant legal services, that the contested disclosures would not only violate the attorney-client privilege, but would further risk potentially placing indigent clients in harm's way, serving to deter them from seeking legal counsel.

Recognizing a burden on the part of legal services to show particularized claims in order to support arguments of attorney-client privilege, the court of appeals remanded the case to the district court for possible further proceedings. According to Brennan Center staff, speaking in informal post-decision remarks, because the codes under contention were so specific, the decision leaves open the possible assertion that disclosure in individual cases violates the attorney-client privilege, especially for certain protected classes, such as victims of domestic violence. This contrasts with the recent settlement in another LSC-IG case, *U.S. v. Georgia Legal Services Program*, where the Brennan Center also provided an amicus brief. In the latter case, because the inspector general, in a longitudinal study, had never sought specific codes and instead used broader case categories (i.e., "family law" as opposed to "domestic violence"), the parties agreed to dismissal of the subpoenas and the application of a two-pronged filter. The filter in the Georgia case consists of the use of a strict confidentiality agreement to guide the operations of an independent consultant employed by the IG to code information by census tract.

Pro Bono Conference and 2001 Awards

The 2001 Pro Bono Conference was held at the University of Richmond T.C. Williams School of Law on Friday, May 18, 2001. The CLE portion featured a mix of topics of interest to corporate counsel, government attorneys, guardians ad litem and young lawyers. The Virginia Beach Bar Association's CLASS protective order program and The Community Tax Law Project, a Richmond-based statewide low-income taxpayer advocacy group received the 2001 VSB Lewis F. Powell, Jr., Pro Bono Award. The Honorable Ronald H. Marks, chief judge of the Virginia Beach J&DR District Court and Nina E. Olson, the departing Executive Director and founder of CTLP received special recognition

for their efforts on behalf of the honoree groups. The award was presented at a ceremony and reception held on Thursday evening, May 17, at the law school, in conjunction with the conference. Over 150 attorneys, judges and paralegals attended the conference events. Mary C. Bauer, legal director of the Virginia Justice Center for Farm and Immigrant Workers, received the 2001 Virginia Legal Aid Award at a special luncheon held during the bar's annual meeting in Virginia Beach. Noted Richmond attorney Oliver W. Hill was present at the luncheon where an official announcement was made concerning the launching of a civil rights foundation established in his name.

Resolution Implementation

The committee is using a subcommittee to promote incremental implementation of the VSB council's Resolution to Enhance Pro Bono Publico Service. It had hoped that strong publicity about this year's Powell Award recipients would help foster maintenance and development of other targeted volunteer efforts around the Commonwealth. I am pleased to report that at least one other jurisdiction is exploring the feasibility of replicating the Virginia Beach Bar Association's model protective order project. Another group, an offshoot of the Virginia Women Attorneys' Association, has implemented an independent program, structured along the lines of CTLP, to address the special education advocacy needs of children and youth. The Virginia Bar Association is spearheading a project to foster a coordinated effort among Virginia's law schools to foster pro bono publico. And, several Access Committee members, including the chair, have initiated or supported efforts to, respectively: engage major law firms in underwriting increased funding for legal services through a carefully orchestrated development campaign; develop the capacity on the part of local bar associations to address complex family law and other pressing low-income client concerns; and, through litigation, contest actions by funders at the federal level which tend to negate or sacrifice at worst, or ignore, at best, the emerging legal needs of local communities.

Due Diligence and Committee Input on MDP Deliberations

The committee has a long-standing practice of engaging in due diligence inquiries on behalf of the VSB council before recommending candidates for VSB-appointed seats on the boards of directors for select legal aid societies. Consultations are conducted by the bar president through written inquiries to local bar leaders and chief judges serving areas included in the boundaries of the programs. Aside from exploring issues related to the appointment process in the coming bar year, the committee expects to re-visit related issues involving legal aid licensing, pro bono service by foreign-state licensed counsel, and involvement of legal nonprofits in multidisciplinary practice settings. Regarding the latter, the committee asked member Elizabeth Pendzich to represent its perspective through comments at the November meeting of the Joint VSB/VBA Commission on Multidisciplinary Practices. Depending on the direction and outcome of the Commission's work, the Access Committee stands ready to collaborate on possible ethics rule language, intended to extend additional protections to the public, while better accommodating the special needs of non-profit legal services providers

