

SPECIAL COMMITTEE ON ACCESS TO LEGAL SERVICES

Robert J. Stoney, chair

Overview

During fiscal year 2003–04, the Special Committee on Access to Legal Services acted as the incubator for several major projects dealing with lawyers' ethical duties and access to the courts. Several of these relate to professional interests of the Honorable Leroy R. Hassell Sr. or of the Supreme Court of Virginia as a whole.

One project involved the Virginia State Bar's submission of an *amicus* brief in *Walker v. American Ass'n of Professional Eye Care Specialists*. The brief was written by Ethics Counsel James M. McCauley. In a favorable decision in June, the Supreme Court of Virginia concluded that merely arranging for delivery of a pro se litigant's signed pleading and writing a cover letter that included a filing fee from the firm's escrow account did not make the attorney in question "counsel of record." Rather in this case, the lawyer's actions facilitated the pro se litigant's filing of pleadings prepared by a different lawyer in order to toll the statute of limitations and preserve her cause of action.

Fundraising Campaign for Legal Aid and Indigent Defense Task Force

Other major projects fostered by the committee, and now in various stages of completion, included an all-statewide bar fundraising campaign for legal aid sponsored by the Presidents Council and passage of a VSB Council resolution in support of the American Bar Association's "Ten Principles for a Public Defense Delivery System."

As the bar year ended, committee members helped staff a booth at the Expo during the VSB Annual Meeting, where they shared with visitors the rationale for the fundraising letters that had just been mailed to all active in-state Virginia lawyers. The campaign is designed to help compensate for a precipitous fall in Interest on Lawyer Trust Account revenues (as a consequence of falling interest rates from partner banks) and a substantial cut in federal domestic violence grant monies. The campaign was undertaken after the VSB asked the General Assembly for time to try an alternative to a proposed voluntary check-off on the VSB dues statement. The assembly held off legislation on the check-off for a year.

In addition to approving the Ten Principles, the Council also mandated that a Task Force on Indigent Defense be established under the auspices of the committee. Members of the VSB's Indigent Defense Task Force held their organizational meeting on July 1, 2004. They immediately began working on tasks to produce a report with recommendations on reforms for the VSB Executive Committee's December review. Additional initiatives, some still at the concept development stage, are described below.

Other Pro Se Developments

In keeping with recommendations from the Supreme Court of Virginia's Pro Se Litigants Planning Committee and a directive from the Court's executive secretary, the committee developed a draft report on the feasibility of implementing affordable discrete task representation, also known as unbundled legal services.

The Court's Pro Se Committee concluded that existing Rule 1.2 of the Rules of Court (Scope of Representation) already contemplates "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.

The Access Committee's draft report was publicly presented on two occasions this year, including the VSB's Annual Meeting in Virginia Beach through a continuing legal education program sponsored by the Litigation Section and the Committee on Bench-Bar Relations. There, recommendations for limited-scope assistance such as ghost writing of pleadings and coaching of litigants were well-received. After the draft report is distributed to relevant bar sections and committees for further comment, it will be shared with the council, probably in October.

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

Consistent with results from a survey conducted by the committee in 2002 in which more than 50 percent of respondents requested trial skills and guardian *ad litem* (GAL) training, the committee sponsored two major CLE initiatives this year. They were the regular Pro Bono Conference in May, held back-to-back with the Virginia Public Defender Commission's Juvenile Law & Education Seminar, and a March day-long mock trial held at the federal courthouse in Richmond in conjunction with the American College of Trial Lawyers.

REPORTS OF SPECIAL COMMITTEES

The March mock trial was the second in a series of joint related presentations with ACTL for public interest lawyers. It featured committee member Linda Harris acting as an expert witness and a number of highly regarded Virginia trial lawyers as principals on the defense and plaintiff's litigation teams. The Honorable Robert E. Payne of the U.S. District Court for the Eastern District of Virginia presided over the mock proceedings which were formatted as a sexual harassment suit.

The half-day May Pro Bono Conference featured a rollout of the committee's draft report on unbundling as the main CLE ethics presentation and two breakout sessions. One, on legal resources for military personnel, was moderated by David Bobzien. The other, on child custody and visitation, featured Glenn Lewis as the lecturer. The latter was taped as a pilot to help those planning training events for Chief Justice Hassell's pro bono initiative known as "Virginia's Lawyers Helping Families."

Proposal for Circuit-Based Awards for Pro Bono and Appointed Counsel

The committee is exploring the feasibility of implementing circuit-based awards in three pilot jurisdictions to commend court-appointed counsel and other pro bono attorneys for their extraordinary contributions to the justice system in Virginia. The concept of commendations signed by the Chief Justice was brought to the committee's attention by a retired member of the judiciary. In early 2004, after sharing the proposal with the executive committee of the Conference of Local Bar Associations, I joined CLBA President Judy Rosenblatt in inviting feedback from local bar leaders. We expect to present a concrete proposal to the VSB Council for approval this fall.

Review of Regulations Governing Licensed Legal Aid Societies

During the coming bar year, the committee expects to review in greater detail and to make recommendations on revisions to the regulation governing the licensing of civil legal aid societies in Virginia. Public comment will be invited.

2004 Awards

The committee is pleased to report its selection of the volunteer attorneys of the Fairfax Bar Pro Bono Program and Stephen A. Northup as recipients of the 2004 Lewis F. Powell Jr. Pro Bono Award. It also notes that Nancy J. Glickman, managing attorney at the Winchester Office of Blue Ridge Legal Services, received this year's Virginia Legal Aid Award. Washington & Lee University graduating law student Mark S. Kennedy received the Oliver W. Hill Law Student Pro Bono Award. Author Margaret Edds and Chief Justice Hassell, were, respectively, the guest speakers for the May Pro Bono and June Legal Aid award events.

Exploring Crossover Needs of Indigent Defense and Civil Legal Aid Clients

The committee was invited by the Virginia Law Foundation to resubmit its application next year for a grant to undertake a new legal needs study through one of the professional survey research programs at a Virginia public university. The 2004 request that was denied sought to measure and include among the proposed assessment of traditional legal needs certain crossover issues faced by parolees at risk of being recidivists due to their ineligibility for public benefits and difficulty in securing jobs and housing.

