

SPECIAL COMMITTEE ON ACCESS TO LEGAL SERVICES

Robert J. Stoney, chair

Civil Justice System Developments

Unbundling of Legal Services:

The Virginia State Bar Special Committee on Access to Legal Services was gratified to see one of its major long-term projects placed on the Virginia State Bar Council's action agenda, set for public comment and forwarded to the Supreme Court of Virginia for review and possible approval. Opened by the Court for an extended comment period over the summer, the proposed rules, if adopted, would explicitly sanction the "unbundling" of legal services for *pro se* and other litigants who were unable to afford or otherwise obtain full representation by counsel.

The committee appreciates the guidance offered by the VSB Standing Committee on Legal Ethics related to Supreme Court Rule 1:5 (to explicitly permit ghostwriting without the consulting attorney becoming counsel of record), VSB Rule of Professional Conduct 1.2 (attorney/client relationship) and RPC 4.2 (communications with opposing parties). The access committee declined to address the question of allowing limited court appearances in some situations. It deferred consideration until after it has experience with the proposed incremental reforms and is in a better position to seek additional direction from the bench.

Licensing of Legal Aid Societies:

The committee continued, on an intermittent basis, deliberations to update the regulation covering licensing of legal aid societies. That regulation, 15 *Virginia Administrative Code* 5-10-10, was last revised in June of 1990, before the Court, the Virginia Law Foundation and other entities began programs to expand the delivery of legal services.

Funding for Legal Aid—Statewide Bar Campaign:

The committee is grateful for the council's support of the statewide bar presidents' letter-based fund-raising campaign to benefit legal aid. We thank the council for offsetting related fund-raising costs, thereby making some thirty thousand dollars in proceeds available to the Legal Services Corporation of Virginia (LSCV) for distribution to grantees. The Subcommittee on Funding Alternatives is exploring other ways to support and possibly help underwrite LSCV goals to sustain and expand delivery of civil legal services in Virginia.

Legal Needs Study:

The VSB applied for but was not awarded funds in 2004 to undertake a new legal needs assessment. However, in 2005, the Virginia Law Foundation noted a joint award of twenty eight thousand dollars to the VSB (through the access committee) and to The Virginia Bar Association Foundation for the project. Deliberations about the form and function of the study are ongoing.

June Recipient of the 2005 Virginia Legal Aid Award:

William L. Botts III of Fredericksburg was selected the "Legal Aid Lawyer of the Year." His imaginative outreach to community leaders and other opinion makers during a decades-long career and the extraordinary service he continues to render on behalf of the poor and other vulnerable individuals made him an exemplary honoree.

Developments Related to Indigent Defense Reform

VSB Indigent Defense Task Force:

The Virginia State Bar's Indigent Defense Task Force was formed in 2004 under the auspices of the access committee. It became operational last summer. In October 2004, it issued an interim report on near-term recommendations for systemic reforms to the indigent criminal defense system. The council adopted the task force recommendations, which were shared with Chief Justice Leroy R. Hassell Sr. and with the then-newly operational Virginia Indigent Defense Commission (VaIDC), the successor agency to the Virginia Public Defender Commission. Recommendations included abolition of the present system of nonwaivable caps per criminal charge and retention of the current ninety-dollar-per-hour compensation rate set by the Supreme Court of Virginia.

A member of the task force who also sits on the access committee and the board of the VSB Criminal Law Section (CLS) acted as a special liaison for a new CLS subcommittee that was formed to coordinate the bar's response to related modest reform legislation entertained by the 2005 session of the Virginia General Assembly. The bar's legislative agenda was consistent with the recommendations of the task force.

Task force member and Congresswoman Thelma Drake (who was then a member of the Virginia House of Delegates) expressed great interest in pursuing reforms to better ensure "quality" representation. She suggested explor-

ing the feasibility of expanding the public defender system statewide. The task force deferred to the VaIDC, recommending that it be the entity to determine the appropriate mechanism for configuring the defense delivery system.

Other task force members contributed by surveying experienced retained counsel who routinely accept criminal cases at market rates. They informally charted tables of background data to project costs of best-practice scenarios. They focused on estimating the number of hours that ought to be expended in typical well-trying cases and the costs, over time, of waiving the caps on fees paid to appointed defense counsel in several case categories.

That activity was undertaken to help develop fiscal impact statements on the costs of implementing the task force's recommendations for appointed counsel compensation. Also consistent with task force parity recommendations were conclusions reached by VSB Ethics Counsel James M. McCauley in a 2004 article in *Virginia Lawyer*. He counseled public defenders, as well as prosecutors, to be wary of accepting workloads in excess of what they can realistically and ethically handle.

Intersecting Matters

Other Funding Issues:

At its January meeting, the access committee agreed that it was important that the indigent criminal defense and civil legal services communities not compete for General Assembly appropriations. One potentially divisive bill would have diverted money from legal aid to the criminal fund for indigent defense. We are adamant that parties unite in support of our common cause (i.e., ensuring that the poor have access to both quality civil legal—as well as criminal defense—services.)

Circuit-Based Pilot Awards:

The access committee hosted an inaugural circuit-based awards program to honor pro bono and appointed counsel in three preselected jurisdictions under a pilot program approved by the bar council. Michelle J. L. Atkins, John Randolph “Randy” Nelson and Melanie Leigh Jorgensen were selected the recipients of framed award certificates cosigned by Chief Justice Leroy R. Hassell Sr. and VSB President Phillip V. Anderson.

The awards were implemented on a pilot basis to recognize extraordinary contributions to the Virginia justice system made by pro bono or nominally compensated appointed counsel who take civil and indigent criminal defense cases. The framed certificates commend recipients for outstanding service to the Supreme Court of Virginia. The initiative is consistent with the council's 1999 Resolution to Enhance Pro Bono *Publico* and with Rules of Professional Conduct 6.1 and 6.2, which became effective in 2000. These goals included publicizing attorney commitment to making the justice system work in Virginia, pressing for reform of the criminal justice system through increases in the compensation paid to counsel for indigent criminal defendants and acknowledging the pro bono nature of much of the nominally-compensated court-appointed work undertaken by members of the Virginia bar.

Local bar associations and chief judges and other court personnel in each of the pilot circuits helped plan and execute formal presentation ceremonies. The access committee expects to make recommendations to the council concerning possible expansion of the pilot project beyond the original three circuits, which were in the fourth (Norfolk), twenty-fourth (Lynchburg and environs), and the thirtieth (Scott, Lee and Wise counties). We are grateful to retired Judge Dale Harris for her imagination, inspiration and hard work in getting this project off the ground.

May Pro Bono Conference:

The 2005 Pro Bono & Access to Justice Conference focused on “Immigration Law and the Collateral Civil Consequences of Criminal Convictions and Other Status Problems.” The conference also featured an award ceremony and reception at the University of Richmond School of Law, where Joseph W. Gorrell and Amandeep Singh Sidhu were presented with, respectively, the Lewis F. Powell Jr. and Oliver White Hill Law Student pro bono awards. The ceremony guest speaker, Magistrate Judge Dennis W. Dohnal (U.S. District Court, Eastern District of Virginia), offered compelling remarks on the role of the “citizen lawyer.” His talk appeared afterward in bar publications.

Gratitude to the Judiciary

The committee commends Chief Justice Leroy R. Hassell Sr. for his uncommon vision in instituting numerous projects to make legal services more genuinely accessible to the public. We also note Chief Justice Hassell's many efforts to educate members of the bar with respect to best practices through his free indigent defense, child custody and other training initiatives. We also thank local bar leaders and chief circuit judges for their continuing generosity in consulting with the VSB on appointments to several legal aid society boards of directors.

