

DELAWARE'S ACCESS TO JUSTICE COMMISSION: PROGRESS OF THE CIVIL COMMITTEES

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I. BACKGROUND AND FORMATION OF THE DELAWARE ACCESS TO JUSTICE COMMISSION

A. Why Have A Commission?

Access to Justice Commissions have been formed nationwide to provide a coordinated approach to addressing issues that may impede accessing justice.¹ Through collaboration and the sharing of assets and information, Access to Justice Commissions, comprised of different stakeholders, can develop a comprehensive understanding of the barriers to accessing justice that arise in states' civil justice systems.

Over the past two decades, Delaware has had a number of access to justice initiatives, although minimal cohesion between those initiatives has resulted in a patchwork of varied approaches to address the access to justice issues. Many of these initiatives focused on the gap in legal services available to address the needs of Delaware's lower income citizens. This gap often is referred to as the "justice gap."² Recognizing the need for leadership and effective coordination of efforts in Delaware to respond to the unmet legal needs of low and moderate income people, the Supreme Court of the State of Delaware established the Delaware Access to Justice Commission.³ The Commission's mandate is to identify barriers to the judicial system in Delaware and to develop recommendations to improve access to justice for Delaware's citizens.

1. Early Efforts To Address The Justice Gap

Delaware has a strong history of support for access to justice. Efforts such as the Delaware Supreme Court Fairness for All Task Force and the Delaware State Bar Association's Access to Justice Committee have done important work

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1. The number of ATJ Commissions nationwide continues to grow with currently 39 in existence including Virgin Islands, Puerto Rico, and D.C. A.B.A., *ATJ Commissions Directory and Structure*, ABA, https://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/atj-commissions/commission-directory.html (last visited Aug. 30, 2017).

2. SUBCOMMITTEE ON THE EFFICIENT DELIVERY AND ADEQUATE FUNDING OF LEGAL SERVICES TO THE POOR, REPORT OF THE SUBCOMMITTEE ON THE EFFICIENT DELIVERY AND ADEQUATE FUNDING OF LEGAL SERVICES TO THE POOR 7-8 (Delaware Access to Justice Commission 2017) [hereinafter *Funding Report*].

3. Amended Administrative Order, *In re Delaware Access to Justice Commission*, Strine, C.J. (Del. Dec. 15, 2014), <http://courts.delaware.gov/supreme/docs/ATJ-Order-2014Dec15.pdf> [hereinafter Amended Order].

on issues related to *pro se* litigants' ability to access the courts, funding for civil legal aid service providers, and support for *pro bono* initiatives. The lack of resources to serve adequately those in poverty has been a problem for decades. More recently, concerns have spread to the unmet need of those who are above the federal poverty guidelines, but who do not have the means to afford legal assistance.

Studies done to measure the unmet need for legal services demonstrate that, despite great effort, states, including Delaware, have failed to meet the needs of their lower income citizens. For example:

- The Legal Services Corporation's ("LSC") 2009 report, "Documenting the Justice Gap in America," found that of those who sought legal assistance from LSC grantees, 50% were turned away due to a lack of resources. That same LSC report found that state studies completed from 2000-2009 consistently show that 80% of the eligible population's civil legal needs are not being met;⁴
- The 2013 Current Population Survey, a joint effort by the U.S. Bureau of Labor Statistics and the U.S. Census Bureau, estimated Delaware's poverty population to be approximately 123,000. In 2015, the three organizations that are supported by the Combined Campaign for Justice —Community Legal Aid Society, Inc. ("CLASI"), Delaware Volunteer Legal Services ("DVLS"), and Legal Services Corporation of Delaware ("LSCD")—provided services to more than 10,000 individuals;⁵
- In 2013, CLASI sought to collect data on unmet legal needs with the patient population of Westside Family Healthcare. Those patient surveys revealed that a large proportion of respondents have unmet legal needs that may have adverse impacts on their health. In this survey, 60.6% of survey participants reported housing concerns (similar to the 2008 survey), but only 1.5% reported meeting with an attorney to discuss these concerns;⁶ and
- A 2009 Delaware Supreme Court Fairness for all Task Force report found that the majority of self-represented litigants surveyed in Delaware's Justice of the Peace and Family Courts reported that they could not afford an attorney.⁷

2. The Current Landscape

More recently, the Commission's Subcommittee on the Efficient Delivery and Adequate Funding of Legal Services to the Poor (the "Funding Subcommittee") estimates that from a total population of just under 946,000 in 2015,

4. LSC, *Documenting the Justice Gap in America. The Current Unmet Civil Legal Needs of Low-Income Americans* 12 (2009), http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

5. Delaware Bar Foundation 2018 IOLTA Grant Application, CLASI Application 3, 5-7, 13 [hereinafter CLASI Application]; Delaware Bar Foundation 2018 IOLTA Grant Application, DVLS Application 21-22 [hereinafter DVLS Application]; Delaware Bar Foundation 2018 IOLTA Grant Application, LSC Application 24-25 [hereinafter LSC Application].

6. CLASI, *Medical-Legal Partnership Pilot Project. Project Pilot Period: April 1, 2013-September 30, 2013. CLASI's Final Report to the Delaware Healthy Mother and Infants Consortium* 5, <http://www.declasi.org/wp-content/uploads/2015/04/2013-MLP-Pilot-Study-Final-Report.pdf>.

7. DELAWARE SUPREME COURT, DELAWARE COURTS: FAIRNESS FOR ALL TASK FORCE 22 (2009), <http://courts.delaware.gov/docs/FAIRNESSFINALREPORT.pdf>.

approximately 140,000 Delawareans were eligible for free legal services under the 125% poverty level standard, while over 260,000 Delawareans would be eligible for free legal services applying the 200% poverty level standard.⁸ This does not include the number of people who are above the federal poverty level guidelines, but do not have the resources to afford legal assistance.⁹ Yet, the Funding Subcommittee concluded that Delaware's legal aid organizations have the resources to serve the civil legal needs of only one-eighth of Delaware's low-income population.

Delaware's current fiscal landscape suggests that the situation is not likely to improve in the near future. The longstanding appropriation for Delaware's legal aid service providers was eliminated in the FY 2018 Budget Act, but other funding was earmarked for fiscal year ("FY") 2018 only. Future appropriations are uncertain. In addition to the operating budget appropriation, the State has provided funding through the Grant-in-Aid Act ("GIA"), which funds non-profit agencies and other non-state entities. Unfortunately, there were 20% across-the-board budget cuts in the FY 2018 GIA. While funding has decreased, the need for legal services has not. The recently released 2017 Justice Gap Report found that low income Americans are receiving inadequate or no legal help for 86% of their civil legal problems.¹⁰ We have no reason to believe that Delawareans are faring better.

B. Establishment Of The Delaware Access To Justice Commission

1. Background

The Delaware Access to Justice Commission (the "Commission") was created on the recommendation of an exploratory committee convened by Justice Jack B. Jacobs. The exploratory committee, comprised of judicial officers, representatives of civil legal aid organizations and the Bar, and private attorneys, met for the first time in September 2013 and agreed that there was a need for a statewide, coordinated effort to combat the barriers Delawareans face to accessing justice.

The Delaware Supreme Court entered an order on November 13, 2013 establishing the Commission, effective as of January 1, 2014 (the "Order"), for an initial two-year period.¹¹ The Commission was charged with providing a coordinated approach to investigating and addressing gaps and critical needs related to accessing justice in Delaware. With Justice Jacobs' retirement in 2014 and the appointment of Chief Justice Leo E. Strine, Jr. in that same year, the Commission's development temporarily was suspended as leadership transitioned.

2. The Amended Order

Once Chief Justice Strine and Justice Karen L. Valihura were appointed to the Supreme Court in February and July of 2014 respectively, the momentum for establishing the Commission was re-established. On December 15, 2014, Chief Justice Strine signed an amended order (the "Amended Order"), bringing together a group of private citizens who could bring an independent perspective on important issues of justice and to make valuable recommendations to all

8. *Funding Report*, *supra* note 2, at 8.

9. *Id.*

10. LSC, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans* 6 (2017), <http://www.lsc.gov/media-center/publications/2017-justice-gap-report>.

11. Administrative Order, *In re Delaware Access to Justice Commission*, Jacobs, J. (Del. Nov. 13, 2013).

relevant stakeholders. The Amended Order charged the Commission with initially studying and making recommendations to address:

Whether resources devoted to providing legal services to the poor are deployed effectively, whether there would be gaps in funding regardless of whether resources are deployed optimally, and creative means to close any gaps;

The difficulties that confront lawyers who wish to provide legal services to clients of ordinary means and to do so in a manner that enables them to run their law firms in a profitable, ethical, and sane manner;

Means to increase the pool of qualified legal advisors to help litigants of limited means, such as increasing pro bono service by in-house counsel and by members of the Bar who are not litigators, and considering whether forms of limited representation should be authorized in critical areas of need;

Rationalizing and coordinating the efforts of the various Courts in helping pro se litigants, including by considering broadening the role of the law libraries to make them a central resource in the provision of services to pro se litigants in all courts; and

Identifying the causes of the stark disparity between the percentage of Delawareans who are black and the percentage of those incarcerated in Delaware's prisons who are black, and recommending measures to ensure that this disparity does not result from racial discrimination and to reduce any inequities that are not justified as a matter of sound criminal justice policy.¹²

The Amended Order required the Commission to establish the following subcommittees to assist in carrying out its mission and operations on the civil side:

- (i) the Subcommittee for the Efficient Delivery and Adequate Funding of Legal Services to the Poor;
- (ii) the Subcommittee on Judicial Branch Coordination in Helping Pro Se Litigants; and
- (iii) the Subcommittee on Promoting Greater Private Sector Representation of Underserved Litigants.¹³

The work of each of these Subcommittees is described below. To avoid conflicts of interest, the Amended Order provided that judges, staff, and employees of the State could participate on the Subcommittees, but solely as non-voting members.¹⁴ Further, the Amended Order provides: "Any recommendations by the Commission shall be made in the name of the Commission only, and not of the individual members or the institutions by which they are employed."¹⁵

The members of the Commission and its Subcommittees attended a kickoff meeting on December 15, 2014. At the meeting, Chief Justice Strine, Justice Valihura, and Commission co-chairs, Yvonne Takvorian Saville, Esquire and

12. Amended Administrative Order, *supra* note 3. This last area concerns the Criminal Justice System and is not addressed in this article, which concerns only the Commission's work as it relates to the civil justice system in Delaware.

13. *Id.* § 4.

14. *Id.* § 5.

15. *Id.* § 7.

Gregory B. Williams, Esquire, made introductory remarks. Those remarks were followed by an overview of other states' commissions, provided by Steve Grumm, American Bar Association Director of the Resource Center for Access to Justice Initiatives. Bryan A. Stevenson, Executive Director of the Equal Justice Initiative, also discussed racial disparities in criminal justice systems, as Delaware's Commission, unlike most states, also considers criminal, in addition to civil, issues.

3. The Process

Immediately following their formation, the Subcommittees started gathering information, focusing on the availability of resources and identifying any gaps in services. Each Subcommittee targeted its approach based on its mission. Over the past two years, the groups conducted their analysis, met to discuss their findings, and debated issues to reach their recommendations. The three civil Subcommittees have completed their analysis and their final recommendations have been submitted to the Commission, which issued a report to the Supreme Court this summer.

II. THE FUNDING SUBCOMMITTEE

The Funding Subcommittee extensively studied the justice gap in Delaware.¹⁶ Many of its findings are discussed in the Introduction. Its report observes that the “justice gap is more than a philosophical ideal.”¹⁷ Rather, “[t]he legal issues that people face can have life altering implications.”¹⁸ These real life issues may include rental, eviction, and housing issues, domestic violence, child custody, support and alimony issues, and issues relating to government benefits, to name just a few.

A. Funding Subcommittee Goals And Objectives

The scope of this Subcommittee's charge was:

- Analyze the efficiency of the delivery of legal services by Delaware organizations that provide such services to low-income people;
- Suggest areas where that efficiency might be improved;
- Determine whether there would be funding gaps even if existing resources were used in the most efficient manner; and
- Identify and recommend sources of increased funding for Delaware's legal aid organizations.

16. The Members of this Subcommittee were: (i) Voting Members—Suzanne Grant (Co-Chair), Donald J. Puglisi (Co-Chair), Rick Alexander, Esq., Richard Heffron, the former Honorable Jack Jacobs, Fred Sears, and Vincent Thomas, Esq.; (ii) Non-Voting Members—the Honorable Karen Valihura, the Honorable Tamika Montgomery-Reeves, William Sudell, Jr., Esq., Tom Cook, Jamie Johnstone, Kyle Baranski, Brian Maxwell, Michael Morton, and Spencer Price; and (iii) Reporters—Evelyn Nestlerode, Nathan Emeritz, Esq., Katherine Neikirk, Esq., and Wali Rushdan, II, Esq.

17. *Funding Report*, *supra* note 2, at 5.

18. *Id.*

B. Background—Delaware’s Legal Aid Network

By way of background, a fundamental part of Delaware’s legal aid network is its three non-profit legal service organizations: CLASI, LSCD, and DVLS. In addition, the Delaware Courts’ Online Citizen Help Center and the Legal Help Link provide general guidance and information about access to legal representation through the legal aid organizations.

CLASI is a private, non-profit law firm established in 1946 by members of Delaware’s legal community in response to the need for civil legal services for people unable to afford private attorneys. CLASI provides legal services in each of Delaware’s three counties to low-income clients and assists them with housing, public benefits, consumer, immigration, and family law problems. CLASI staff also assist elderly and disabled people, as well as those who have been victims of housing discrimination. CLASI also engages in community outreach by making legal services available in institutions, shelters, hospitals, nursing homes, senior centers, and client’s homes if they are unable to travel to a CLASI office.

In 2015, CLASI handled 2,729 cases and presented 103 legal education workshops to approximately 4,300 citizens.¹⁹ Also in 2015, CLASI:

- Assisted 159 clients, affecting at least 474 household members in housing matters, including evictions, access to housing programs, and housing quality issues;
- Prevented eviction for 50 households, keeping 157 people, including 88 children, from becoming homeless;
- Provided advice or representation to 305 victims of domestic violence;
- Represented 15% of the victims who filed for Protection From Abuse (“PFA”) orders (and those clients were successful in 85% of their trials);
- Assisted 210 clients with public benefits problems, providing help to 295 children living in client households; and
- Assisted 108 clients with Medicaid and Medicare problems, helping 288 household members.

This is not an exhaustive list of CLASI’s 2015 activities.

In 2016, CLASI handled 2,705 cases.²⁰ Among them, CLASI attorneys and paralegals assisted 277 clients, affecting at least 687 household members in housing matters, including evictions, access to housing programs, and housing quality issues. CLASI represented 461 households headed by single women with children. This figure represents 31% of CLASI’s total client caseload.²¹ Also in 2016, CLASI assisted 69 clients with Medicaid and Medicare problems, helping 162 household members. CLASI assisted 367 elderly clients with housing, consumer, and income maintenance matters. In 2016, CLASI provided advice or representation to 336 victims of domestic violence in Kent and Sussex Counties, and

19. *Funding Report*, *supra* note 2, at 11.

20. CLASI Application, *supra* note 5, at 13.

21. *Id.* at 6.

CLASI's assistance affected 916 household members, including 523 children. In 2016, CLASI conducted 124 community legal education presentations and reached approximately 8,712 people throughout Delaware.²² Again, this list is not an exhaustive description of CLASI's work in 2016.

LSCD assists Delawareans with bankruptcy petitions, consumer finance problems (including repossessions, deceptive trade practices, fraud, debt collection activities, and fair credit reporting actions), housing problems (including eviction, foreclosure, unsafe conditions, code violations, and utility cut-off), and unemployment benefit programs. LSCD receives a grant from the Legal Services Corporation through an appropriation from Congress. LSCD initially was created to receive federal funding that, because of federal restrictions, would not have been available to other legal aid organizations. In 2015, LSCD provided legal services in over 1,420 cases, helping over 3,850 people.²³ Roughly one-third of these cases involved consumer finance issues, with the remaining two-thirds involving housing issues, including many landlord-tenant cases and mortgage foreclosure cases.

In 2016, LSCD provided services in almost 1,400 cases (cases that were both open during and closed in 2016), assisting over 4,000 Delawareans.²⁴ Services were provided in an additional 356 cases that were open in 2016 and which remained open at year-end.²⁵ More than 41% of the cases handled in 2016 were in the consumer or finance area. Of these, more than 68% involved bankruptcy, collections, or repossessions.²⁶ Approximately 55% of the cases involved housing issues, with the overwhelming majority of those being private landlord-tenant cases or mortgage foreclosures.²⁷ LSCD attorneys have provided mortgage foreclosure assistance to Delawareans and have attended every mediation session in New Castle, Kent, and Sussex Counties since the mandatory Superior Court Mediation Program's inception. LSCD has provided direct representation to homeowners at these mediation sessions—to over 1,200 individuals. The remainder of the cases were of the income maintenance variety.

In 1981, the Delaware State Bar Association established DVLS to fill a void created by severe cutbacks in the federally funded LSCD. DVLS began accepting cases in April 1982. Today, DVLS pro bono volunteers total approximately 900.²⁸ DVLS assists with: PFA and other family law matters for domestic violence victims, private housing matters, custody, visitation, divorce cases, and estate planning. In 2015, 3,396 individuals received representation, advice, or referral through DVLS and the Legal Help Link.²⁹ In the same period, pro bono attorneys closed 538 cases and provided more than 2,300 hours of service. DVLS staff attorneys closed 219 cases and logged over 2,000 hours of service. In calendar year 2016, 3,826 individuals received representation, advice, or referral through DVLS programs and the Legal Help Link.³⁰

22. *Id.* at 11.

23. *Funding Report*, *supra* note 2, at 12.

24. LSC Application, *supra* note 5, at 24-25.

25. *Id.* at 25.

26. *Id.*

27. *Id.*

28. DVLS Application, *supra* note 5, at i.

29. *Funding Report*, *supra* note 2, at 13.

30. DVLS Application, *supra* note 5, at 21.

DVLS manages the Legal Help Link, a telephone call center with a centralized intake system designed to serve Delaware's indigent population. Created in 1997, the Legal Help Link allows clients to call one telephone number to determine if they qualify to receive legal services from Delaware Law School's Civil Clinic or one of Delaware's three primary legal service providers: DVLS, CLASI, or LSCD.³¹

The introduction of the Legal Help Link constituted a significant improvement for Delaware residents seeking legal advice. Today, the Legal Help Link receives approximately 30,000 calls each year and completes between 2,000 and 4,000 referrals annually. While those numbers are impressive, they mask the Legal Help Link's steadily increasing costs, inefficiencies in delivering legal services to qualified Delaware residents, and the inability to provide Delaware-specific online legal services to an increasingly connected world.

In FY 2015, the Legal Help Link sought additional funding due to a dramatic increase in employing law clerks to answer calls and complete intakes and referrals and a decrease in the availability of work-study law students to assist. DVLS reduced the Legal Help Link's staffing. DVLS has spent significant time exploring ways to use technology to supplement the Legal Help Link, increase access to justice, and eventually provide cost efficiencies to the Legal Help Link.

Two other organizations play an important role in Delaware's legal aid network—the Delaware Bar Foundation (the “Bar Foundation”) and the Combined Campaign for Justice (“CCJ”). The CCJ, which began in 1999, is a coordinated effort by the three legal aid organizations to raise contributions from Delaware's legal community. The CCJ has been successful, as the total annual giving in recent years is in excess of \$1 million.

The Bar Foundation is a non-profit Delaware corporation which receives both IOLTA and non-IOLTA funding. Funds derived from the Interest on Lawyers' Trust Accounts (“IOLTA”) program support legal services to the indigent in Delaware.³² The program is administered by the Bar Foundation and governed by the Delaware Supreme Court. Contributions to the Bar Foundation outside of the IOLTA program fund all aspects of its mission.

The Bar Foundation evaluates grant applications from legal aid organizations and makes funding recommendations to the Delaware Supreme Court. For fiscal years 2013-2017, the Bar Foundation received \$600,000.00 from the State through a line item in the State Budget. The Bar Foundation awarded these funds to Delaware's three legal aid organizations. The longstanding appropriation for Delaware's legal aid service providers was eliminated in the FY 2018 Budget Act, but other funding (\$540,000.00) was earmarked for FY 2018 only.³³

The Bar Foundation has been working with its legal service provider partners and an outside vendor to address the issues the Legal Help Link faces. The Bar Foundation is now in the early stages of designing a Delaware-specific web portal with an online intake system to allow Delaware residents to determine whether they qualify for legal aid by answering a series of questions online. The web portal also will provide additional information about Delaware legal services, links to the existing websites of Delaware's legal services providers, and useful references to forms and content available from the Delaware Court System, as well as other helpful information.

31. The authors thank Ryan C. Cicoski, Esquire for providing this information on the Legal Help Link.

32. The IOLTA program was first authorized on September 29, 1983 by an Order of the Delaware Supreme Court. The program's success depends upon the close cooperation of Delaware's legal and financial communities. The IOLTA fund is comprised of interest accruing on lawyers' aggregated escrow accounts that contain client deposits which are small in amount or held for a short period of time. The interest collected on participating accounts is transferred to the Bar Foundation and then distributed in the form of grants to agencies that promote and improve legal services to the poor.

33. Fiscal Year 2018 Appropriation Act, H.S. 1 for H.B. 275, Gen. Assemb. § 58(b) (Del. 2017).

A review of an initial prototype of this system has occurred, and it is anticipated that a basic version could be launched before the end of the year on both computers and mobile devices. After launch, a marketing campaign will roll out to create awareness of the new system and how qualified Delaware residents can access it. In the years ahead, the Bar Foundation will work closely with the Delaware Courts, Delaware's legal services providers, and many others to add additional capabilities, content, and functionality. In the end, the hope is to create a much improved service for those who desperately need it.

C. Funding Subcommittee Findings

The Funding Subcommittee concluded that, given their resources, the three legal service organizations are effective and efficient due to a high degree of coordination that has eliminated duplicating services. Any consolidation among the three legal service providers will not likely result in any cost savings due to their already high level of coordination. In addition, the Bar Foundation, in conjunction with its annual grant application process, has sought to ensure that there are no overlapping services or other inefficiencies in the provision of services. On the other hand, it concluded that it may be possible to achieve certain operational efficiencies through common payroll, accounting, technology support, grant writers, and fundraising efforts.

Even with improvements on efficiencies in the legal aid system, the Subcommittee believes "the justice gap will remain large."³⁴ In a May 2017 report to the Bar Foundation, DVLS stated that in FY 2017, it was forced to turn away 2,073 cases for indigent Delawareans due to a lack of resources.³⁵ DVLS faces serious need, particularly in the family law area (including custody cases).

Funding sources have been stressed. For example, interest on lawyers' trust accounts is an important source, but record low interest rates and variability in rates make it an unpredictable source of funding. Delaware law firms and individual Delaware Bar members, through their contributions to the CCJ, already are among our nation's leaders in providing funding to Delaware's legal service organizations. The CCJ recently has added a full-time development director with the goal of increasing funding.

Delaware's legal aid organizations have worked hard to secure other public funding, including federal funding. Delaware's legal aid organizations actively have sought funding from grants, contracts, and pass-throughs provided by various State agencies. Delaware's \$12.00 per capita legal aid funding is in excess of the national average.³⁶

The report notes that compared with other states, Delaware's funding sources are more limited.³⁷ It observes: "Sources of legal aid funding that have been successfully tapped in other states but are either untapped or used to a minimal extent in Delaware include: court filing fees or fines; *pro hac vice* fees; *cy pres* rule or statute; annual Bar dues; and foundation and other private support."³⁸

Finally, the report observes that legal aid to low-income people is a societal issue, requiring support beyond members of the legal community.

34. *Funding Report*, *supra* note 2, at 2.

35. DVLS, address to the Board of the Bar Foundation (May 24, 2017).

36. *Funding Report*, *supra* note 2, at 19.

37. *Id.* at 21.

38. *Id.*

D. Funding Subcommittee Recommendations

The Funding Subcommittee's recommendations include:

- The legal aid providers may derive operational efficiencies by using a common party for payroll, accounting, technology support, grant writing, and fundraising;
- Consideration should be given to selecting the best-in-class portal triage system and best-case management system for use across all three service providers;
- While improvement of the current system is under review, the pace of that consideration and technology implementation needs to be accelerated greatly;
- The Delaware Courts should establish internet portals and stand-alone kiosks to facilitate litigant access to court services and provide real-time assistance for navigating the litigation process;
- With the addition of a full-time development director, the CCJ should be able to increase its funding support to legal aid organizations by increasing the percentage of Delaware Bar members who contribute to the campaign, improving the retention rate of those who currently contribute and increasing the average contribution made by contributing members;
- Untapped sources of funding to support Delaware's legal aid organizations include an increase in *pro hac vice* fees; allocation of class action residual ("*cy pres*") funds to legal aid organizations, and foundation and other private sector support for funding legal aid organizations; and
- To improve the efficiency of and increase funding available to organizations that provide legal aid to low-income Delawareans, coordinated and effective leadership will be required from the legal aid organizations themselves, the Courts, the Delaware Bar, and the Commission.

III. SUBCOMMITTEE ON JUDICIAL BRANCH COORDINATION IN HELPING PRO SE LITIGANTS³⁹

A. Pro Se Subcommittee Objectives

The objectives of the Subcommittee on Judicial Branch Coordination in Helping Pro Se Litigants ("Pro Se Subcommittee") were:

39. The members of this subcommittee were: (i) Voting Members—Lewis H. Lazarus, Esq., (Chair), I. Connor Bifferato, Esq., Curtis P. Bounds, Esq., Bernice Edwards, Jason C. Jowers, Esq., Leslie C. Leach, Claudia Pena Poretti, and Gerald I. H. Street, Esq.; (ii) Non-Voting Members—the former Honorable Kim E. Ayvazian, the Honorable Kenneth S. Clark, Jr., the Honorable Peter B. Jones, the Honorable Bonita Lee, and the Honorable Lynne M. Parker; and (iii) Reporters—Addie P. Asay, Esq., Kathryn Coombes, Jody Jacobetz Huber, Esq., Alda Monsen, Amy A. Quinlan, Esq., and Kara M. Swasey, Esq.

- Examine whether the judiciary effectively is coordinating its approach to helping pro se litigants;
- Explore ways the Courts can coordinate their pro se assistance efforts more effectively and consider conversion of currently underutilized law libraries into pro se assistance centers; and
- Consider whether Delaware should allow limited legal representation in specific areas where litigants have difficulty obtaining affordable legal services and there is a compelling human need, such as cases involving evictions or family law.⁴⁰

B. Pro Se Subcommittee Findings

Pro se litigants represent themselves in court without the assistance of an attorney. This means they must determine, without a lawyer, how to file or respond to a case, where to file a case, how to obtain or respond to discovery, and how to try a case. Pro se litigants pose challenges for not only themselves, but also the judicial system.⁴¹ The number of pro se litigants in certain types of cases, especially family law matters, exceeds cases where both parties are represented.⁴²

To obtain information about pro se litigant needs, the Pro Se Subcommittee utilized a variety of different methods, including meeting with individuals from each court, staff surveys, public surveys, and visits to Delaware and Maryland resource centers.⁴³ As to whether the judiciary effectively is coordinating its approach to helping pro se litigants, the Pro Se Subcommittee found that each court has responded to the increasing needs of pro se litigants with the creation of both on-site and online materials.⁴⁴ According to the *Pro Se Report*, the courts' efforts include making staff available to assist pro se litigants in person and creating user-friendly materials.⁴⁵ The courts have utilized similar strategies in responding to pro se litigants' needs, but each court develops and executes its own strategy separately. An employee of one court is not expected to know a different court's procedures.⁴⁶ Thus, a pro se litigant who has an issue involving two courts will have to visit both courts' locations or websites to obtain information and forms.⁴⁷

The Pro Se Subcommittee found there is a large quantity of information available to pro se litigants on the Courts' website (<http://courts.delaware.gov>), but recognized that it can be difficult to locate necessary information.⁴⁸ The Pro Se

40. Amended Order, *supra* note 3, ¶ 4(b).

41. Drew A. Swank, *The Pro Se Phenomenon*, 19 BYU J. PUB. L. 373, 384 (2005) (describing how pro se litigants often require more time and assistance in litigation because they are unfamiliar with the law and legal procedures).

42. *Id.* at 376.

43. SUBCOMMITTEE ON JUDICIAL BRANCH COORDINATION IN HELPING PRO SE LITIGANTS, REPORT OF THE SUBCOMMITTEE ON JUDICIAL BRANCH COORDINATION IN HELPING PRO SE LITIGANTS 8 (Delaware Access to Justice Commission 2017) [hereinafter *Pro Se Report*].

44. *Id.* at 11.

45. *Id.*

46. *Id.* at 13.

47. *Id.*

48. *Id.* at 14.

Subcommittee believes a recent website redesign should make the website easier for pro se litigants to use.⁴⁹ The pro se litigant information offered on the website mostly is in text format, which can be lengthy, and perhaps not understood easily by all pro se litigants, especially litigants whose first language is not English.⁵⁰ The Pro Se Subcommittee found more on-site and online resources are needed to meet the needs of pro se litigants, especially in the Justice of the Peace Court, Court of Common Pleas, and Family Court, where most litigants are self-represented.⁵¹ Needed resources include assistance in presenting a case at trial and completing forms.⁵²

As to ways the courts can coordinate their pro se assistance efforts more effectively and the possible conversion of law libraries into pro se assistance centers that are not court specific, the Pro Se Subcommittee found the Delaware law libraries are used infrequently.⁵³ Lawyers and judges, for example, rarely use the law libraries due to the availability of online databases.⁵⁴ According to the Pro Se Subcommittee, the law librarians already offer assistance to pro se litigants and view the addition of a Pro Se Center within the library as a natural development.⁵⁵ Each county's law library readily can be converted into a pro se assistance center because they already have the physical space and some of the resources necessary for a Pro Se Center.⁵⁶ Pro Se Centers must offer certain services, including computers to access court forms, hard copies of court forms, and some staff guidance on completing forms, to meet the needs of pro se litigants.⁵⁷ The Pro Se Subcommittee found some investment will be necessary for converting the law libraries into Pro Se Centers.⁵⁸

As to whether Delaware should allow limited legal representation in areas where litigants have difficulty obtaining affordable legal services and there is a compelling human need, a Bench Bar Committee on Limited Scope Representation presented certain changes to the Delaware Lawyers' Rules of Professional Conduct in 2010.⁵⁹ The Delaware Supreme Court's Permanent Advisory Committee on the Delaware Lawyers' Rules of Professional Conduct (the "Advisory Committee") was asked by the Court for its recommendation on the Bench Bar Committee's proposals. The Advisory Committee studied the proposals and, on October 19, 2011, issued a report recommending certain changes, but not others. To date, the Court has not adopted any changes that were studied.

49. *Id.* at 14-17.

50. *Id.* at 17-18.

51. *Id.* at 18.

52. *Id.* at 18-19.

53. *Id.* at 20.

54. *Id.*

55. *Id.*

56. *Id.* at 20-21.

57. *Id.* at 21.

58. *Id.* at 21-22.

59. *Id.* at 23.

C. Pro Se Subcommittee Recommendations

The Pro Se Subcommittee recommended creating an independent website, accessible from the Delaware Courts' website and focused solely on providing information, resources, and assistance to pro se litigants.⁶⁰ Because it would be difficult to achieve this immediately due to the necessary time, collaboration, and funding, the Pro Se Subcommittee recommended simple modifications to the Courts' current website to better serve pro se litigants in the short-term.⁶¹

The Pro Se Subcommittee also recommended converting the law libraries in each county into Pro Se Centers.⁶² Self-represented parties can obtain court forms and other assistance at Pro Se Centers. The Pro Se Subcommittee identified the resources that would be necessary for a successful resource center. These resources include:

- Computers to access court forms;
- Hard copies of court forms;
- Research materials in English and Spanish; and
- Sufficient staff to serve the needs of pro se litigants.⁶³

Optional, but preferred, Pro Se Center resources the Pro Se Subcommittee identified include:

- Interpreter services;
- Limited legal representation programs;
- The ability to e-file;
- Information from community and social service programs; and
- Training seminars on different topics of interest to pro se litigants.⁶⁴

The Pro Se Subcommittee especially emphasized the importance and benefits of offering e-filing services in the Pro Se Centers.⁶⁵ Pro se litigants would be more likely to use the Pro Se Centers if, in one location, they could find

60. *Id.* at 24.

61. *Id.* at 24-25.

62. *Id.* at 32.

63. *Id.* at 32-33.

64. *Id.* at 33-34.

65. *Id.* at 36.

information, obtain assistance, and e-file.⁶⁶ As the Delaware courts move to one type of e-filing system, e-filing should become easier for both Pro Se Center staff and pro se litigants.⁶⁷

The Pro Se Subcommittee also recommended that a single person oversee all three Pro Se Centers.⁶⁸ The Pro Se Subcommittee further recommended that a partnership with Delaware public libraries, which already partner with state agencies and non-profit organizations, could be beneficial.⁶⁹ Benefits of a partnership could include:

- Joining the library partners' listserv, which would allow the Courts to share relevant court information and receive useful information from other partners;
- Using libraries' meeting space and videoconferencing equipment for community outreach programs by the Courts and possibly for pro se litigants to meet with attorneys; and
- Posting information for pro se litigants in libraries.⁷⁰

Finally, the Pro Se Subcommittee recommended that the Courts follow the example of other states and provide information to the public through social media.⁷¹ Courts in states such as Florida, Michigan, and New Jersey have Facebook pages.⁷² States including Maryland, New Jersey, and Pennsylvania use Twitter to distribute information.⁷³ The Pro Se Subcommittee recognized that the Courts could share basic information, as well as feature useful information for pro se litigants, through social media accounts.⁷⁴ Social media also could provide opportunities for the Courts to collaborate with legal aid agencies, the Delaware State Bar Association, and state agencies and ensure that pro se litigants have opportunities to find helpful resources.⁷⁵ The Pro Se Subcommittee indicated that it would continue exploring the expansion of limited legal representation in Delaware.⁷⁶

66. *Id.*

67. *Id.*

68. *Id.* at 34.

69. *Id.* at 38.

70. *Id.*

71. *Id.* at 37.

72. *Social Media and the Courts*, NATIONAL CENTER FOR STATE COURTS, <http://www.ncsc.org/Topics/Media/Social-Media-and-the-Courts/Social-Media/AOC%20and%20High%20Courts%20on%20Social%20Media.aspx> (last visited Aug. 29, 2017).

73. *Id.*

74. *Pro Se Report*, *supra* note 43, at 37.

75. *Id.*

76. *Id.* at 39.

IV. SUBCOMMITTEE ON PROMOTING GREATER PRIVATE SECTOR REPRESENTATION OF UNDERSERVED LITIGANTS⁷⁷

A. Promoting Representation Subcommittee Objectives

The objectives of the Subcommittee on Promoting Greater Private Sector Representation of Underserved Litigants (“Promoting Representation Subcommittee”) were:

- Examine the impact of revenue challenges on small firms and solo practitioners representing clients of limited means, and identify ways to support these practices, such as by providing free or more affordable continuing legal education (“CLE”) in key areas like management of small legal practices, the creation of a Law Office Management Assistance Program (“LOMAP”) to provide consulting services, whether free of charge or at a fee substantially lower than market rate, and the creation of a statewide clearinghouse for law office management materials and services geared toward solo and small firm practitioners;
- Determine whether there are private sector businesses, similar to healthcare management service organizations, that could help small legal practices in Delaware operate more effectively; and
- Explore ways to increase the level of pro bono legal services provided by the Bar such as training for lawyers who do not practice litigation as their specialty and in-house lawyers, increasing awareness of available pro bono opportunities, enhancing training resources for practitioners taking on pro bono representation in new subject areas, and encouraging law firms and corporations to communicate the expectation that pro bono work is part of a lawyer’s professional obligations.⁷⁸

The Promoting Representation Subcommittee decided these objectives fell into two categories (solo and small firm issues and pro bono service issues) and divided the work accordingly.⁷⁹

77. The members of this subcommittee were: (i) Voting Members—Yvonne Takvorian Saville, Esq. (Co-Chair), Richard Forsten, Esq. (Co-Chair), Adam Balick, Esq., Crystal Carey, Esq., Tabatha Castro, Esq., Charlisha Edelin, Esq., Kathi Karsnitz, Esq., Mary MaloneyHuss, Esq., Luke Mette, Esq., and Richard Rowland; (ii) Non-Voting Members—the Honorable Alan N. Cooper (1952-2015), the Honorable Michael Newell, the Honorable Sheldon Rennie, and Representative Melanie George-Smith, Esq.; and (iii) Reporters—Jennifer-Kate Aaronson, Esq., Jackie Mette, Esq., Katherine Neikirk, Esq., Susan Simmons, and Ashley Tucker, Esq.

78. Amended Order, *supra* note 3, ¶ 4(c).

79. SUBCOMMITTEE ON PROMOTING GREATER PRIVATE SECTOR REPRESENTATION OF UNDERSERVED LITIGANTS, REPORT OF THE SUBCOMMITTEE ON PROMOTING GREATER PRIVATE SECTOR REPRESENTATION OF UNDERSERVED LITIGANTS 4 (Delaware Access to Justice Commission 2017) [hereinafter *Promoting Representation Report*].

B. Promoting Representation Subcommittee Findings

1. Solo And Small Firm Findings

To identify ways to assist solo practitioners and small law firms, the Promoting Representation Subcommittee utilized a variety of methods.⁸⁰ These methods included a survey of attorneys, an analysis of certain statistical records by the Office of Disciplinary Counsel (“ODC”), a survey of other states’ LOMAPs meetings with the Delaware State Bar Association (“DSBA”) about its planned LOMAP, and research regarding the existence of private sector businesses that could handle the back office functions of small legal practices like healthcare management service companies.⁸¹

As a result of this work, the Promoting Representation Subcommittee discovered most solo and small firm practitioners are satisfied with their practices, but do confront challenges in practice management.⁸² The ODC’s analysis of its statistical records showed that the majority of sanctioned violations between January 1, 2013 and July 31, 2015 were attributable to solo practitioners, with most of those violations relating to law practice management.⁸³ The Promoting Representation Subcommittee’s research did not reveal many companies, similar to healthcare management service organizations, that could offer a complete back office solution for small legal practices in Delaware.⁸⁴

2. Pro Bono Service Findings

In examining ways to increase the level of pro bono service provided by the Bar, the Promoting Representation Subcommittee considered how to define pro bono.⁸⁵ Pro bono is a shortening of the Latin phrase *pro bono publico*, which means for the public good.⁸⁶ The term pro bono typically is associated with the donation of free legal services to those in need. Under the Delaware Lawyers’ Rules of Professional Conduct, lawyers may fulfill their voluntary responsibility to provide public interest legal service “by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.”⁸⁷ This definition obviously is broader than the donation of free legal services to those in need. Because the goals of the Commission were more focused on the needs of individuals of limited means, rather than activities or organizations for improving the legal system or profession, the Promoting Representation Subcommittee used “free or reduced fee legal

80. *Id.*

81. *Id.* at 4-5.

82. *Id.* at 5-6.

83. *Id.* at 6.

84. *Id.* at 6-7.

85. *Id.* at 12.

86. *Pro bono*, MERRIAM-WEBSTER’S ONLINE DICTIONARY, <https://www.merriam-webster.com/dictionary/pro%20bono>.

87. DEL. LAW. R. PROF. CONDUCT R. 6.1.

services provided to persons of limited means or organizations that address the needs of persons of limited means” as the pro bono definition throughout its work.⁸⁸

To increase pro bono representation, the Promoting Representation Subcommittee identified the areas of greatest unmet need for pro bono service and barriers to the provision of pro bono service.⁸⁹ The Promoting Representation Subcommittee analyzed information the Pro Se Subcommittee already collected from the Courts, reviewed pro se filings in the Courts for FY 2014, and met with Delaware legal service providers to determine the areas of greatest need.⁹⁰ To identify what stands in the way of attorneys providing pro bono service, the Promoting Representation Subcommittee employed various methodologies, including a survey, focus group sessions with attorneys in different types of practices, and meeting with the organizations that rely upon a large number of volunteer attorneys.⁹¹ The Promoting Representation Subcommittee also met with subject matter experts, including the chair of the Washington Limited License Legal Technician Board and the executive director of the Washington State Bar Association, regarding Washington’s new limited license legal technician program.⁹²

The Promoting Representation Subcommittee determined that family law and consumer law are the areas with the greatest need for pro bono service from the Bar.⁹³ According to the Promoting Representation Subcommittee’s survey, many attorneys perform pro bono work, but fewer attorneys provide more than twentyfive hours of pro bono service a year.⁹⁴ The ABA Model Rules of Professional Conduct recommend that lawyers aspire to provide at least fifty hours of pro bono legal service per year.⁹⁵

Lack of available time or prioritized time is the main barrier to Delaware attorneys performing pro bono work.⁹⁶ And this also is the case for attorneys nationwide.⁹⁷ Other barriers identified by Delaware attorneys include fear, a perceived lack of expertise, and a lack of awareness of the available pro bono opportunities and resources.⁹⁸ Attorneys also may face additional barriers to pro bono service depending on their area of practice.⁹⁹

88. *Promoting Representation Report*, *supra* note 79, at 12 (quoting DEL. LAW. R. PROF. CONDUCT R. 6.1).

89. *Id.* at 12-13.

90. *Id.* at 12-14.

91. *Id.* at 15-16.

92. *Id.* at 16.

93. *Id.* at 14-15.

94. *Id.* at 17.

95. Model R. Prof. Conduct R. 6.1.

96. *Id.* at 18-19.

97. See A.B.A. STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE, SUPPORTING JUSTICE III: A REPORT ON PRO BONO WORK OF AMERICA’S LAWYERS 29 (2013) (noting that “[a]ttorneys overwhelmingly mentioned time constraints as the top factor that most discouraged them from providing more pro bono service in 2011”), https://www.americanbar.org/content/dam/aba/administrative/probono_public_service/lr_pb_Supporting_Justice_III_final.authcheckdam.pdf.

98. *Promoting Representation Report*, *supra* note 79, at 19-20.

99. *Id.* at 20-21.

C. Promoting Representation Subcommittee Recommendations

1. Solo And Small Firm Recommendations

The Promoting Representation Subcommittee recommended that the DSBA continue to work on its LOMAP.¹⁰⁰ LOMAPs are intended to help lawyers with the business aspect of his or her practice and offer information and assistance with law practice management. Examples of states with robust LOMAPs include Maryland¹⁰¹ and Massachusetts.¹⁰² The Promoting Representation Subcommittee recommended that, among other things, the DSBA LOMAP:

- Offer information and advice to solo and small firm practitioners through a website and consultations with DSBA staff or experienced, volunteer attorneys;
- Hold monthly luncheon series on solo and small firm issues and have a website with checklists, sample forms, and helpful articles;
- Contract with vendors to collaborate with solo and small firm practices to provide discounted services on insurance, software, copying, and service of process.¹⁰³

The Promoting Representation Subcommittee also recommended that the ODC continue to offer free CLEs on useful topics for solo and small firm practitioners. Since 2014, the ODC has organized and offered free CLEs with helpful information for solo and small firm practitioners.¹⁰⁴ The purpose of the CLEs is to offer useful and practical advice for solo and small firm practitioners.¹⁰⁵ The ODC recruits attorneys to address various law firm management topics, including information technology issues and staff supervision.¹⁰⁶ The ODC also offers free CLEs providing practical guidance to practitioners on how to maintain their firm's books and records in compliance with Rule 1.15 of the Delaware Lawyers' Rules of Professional Conduct.¹⁰⁷

Finally, the Promoting Representation Subcommittee recommended that law school students and new solo and small firm attorneys be given the opportunity to take classes on law firm management.¹⁰⁸ In the past, Delaware Law

100. *Id.* at 7-9.

101. *See Practice Management*, MARYLAND STATE BAR ASSOCIATION, <http://www.msba.org/practicemanagement/default.aspx>.

102. *See* <http://masslomap.org/>.

103. *Promoting Representation Report*, *supra* note 79, at 7-8.

104. *Id.* at 9.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.* at 10-11.

School has offered a class on law office management and may do so again in the future.¹⁰⁹ The Promoting Representation Subcommittee also discussed a fundamental course on law office management for solo and small firm practitioners in light of the recently reinstated fundamentals requirement for newly admitted attorneys.¹¹⁰ Under Rule 4(D) of the Delaware Rules for Continuing Legal Education, attorneys admitted after December 1, 2015 must attend (within four years from that January 1st), among other fundamental courses, Fundamentals of Law Practice Management and Technology. The first Fundamentals of Law Practice Management and Technology was offered on May 10, 2017.¹¹¹ Topics included law office practice recommendations and lawyer-client relations.

2. Pro Bono Service Recommendations

The Promoting Representation Subcommittee recommended creating a standing pro bono leadership committee.¹¹² The committee would educate and challenge leaders of the Bar to create, support, and sustain both existing and new state-wide infrastructures needed for a high level of pro bono participation from Bar members.¹¹³ Committee members would include judges, leaders of law firms and law departments, and service providers (DVLS, LSCD, and CLASI). The committee would focus on pro bono family law representation issues in 2018 and pro bono consumer law representation issues in 2019.¹¹⁴ This focus would include identification of already existing training materials, preparation of additional training materials as needed, establishment of a system of resource attorneys to answer questions, pro bono representation training, meeting with firm leaders about increasing representation in the designated area of law, encouraging the participation of transactional attorneys, and setting goals for representation.¹¹⁵

Beginning in the first half of 2018, the Promoting Representation Subcommittee recommended holding an annual event for organizations, law firms, law departments, and individual lawyers providing pro bono services.¹¹⁶ At this annual event, attendees could share ideas, identify upcoming needs and opportunities for service, create teams to work on specific pro bono matters, and recognize individuals and organizations who are leaders in creating a culture of pro bono service.¹¹⁷ The pro bono summit could focus on family law in 2018 and consumer law in 2019.¹¹⁸ The Promoting Representation Subcommittee also recommended developing pro bono practice groups, networks, and listservs through which lawyers in different law firms and law departments easily could contact each other to share ideas and information.¹¹⁹

109. *Id.*

110. *Id.*

111. *Id.* at 11.

112. *Id.* at 22.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* at 22-23.

117. *Id.* at 23.

118. *Id.*

119. *Id.*

The Promoting Representation Subcommittee recommended setting a clear, measurable, and collective pro bono target for Bar members.¹²⁰ Law firms, law departments, and individual attorneys wishing to participate in the challenge voluntarily could report their hours to the Supreme Court or the Pro Bono Committee.¹²¹ Progress could be shared annually at the annual pro bono event and Bench and Bar.¹²²

The Promoting Representation Subcommittee also recommended creating an online database of helpful information for attorneys performing pro bono work similar to existing databases in Massachusetts and Minnesota.¹²³ Attorneys who perform pro bono work would have free access to this database.¹²⁴ The database could include, among other things, a calendar with upcoming pro bono training sessions, information about the different types of pro bono opportunities available, and forms and templates.¹²⁵

The Promoting Representation Subcommittee emphasized that it would be important to make Delaware lawyers aware of the existence of such a database and the related opportunities and resources.¹²⁶ This would include increasing awareness of the variety of pro bono opportunities available, the quantity of reference resources, and the availability of experienced people with OCA and DVLS to answer volunteer attorney questions.¹²⁷ There also needs to be increased awareness that there are ways for attorneys to provide pro bono legal services without the risk of malpractice liability, even in the absence of malpractice insurance from an employer.¹²⁸

The Promoting Representation Subcommittee recognized that even with increased pro bono service, there still will be people with legal needs who cannot afford an attorney.¹²⁹ To address this justice gap, the Promoting Representation Subcommittee investigated Washington's legal technician program.¹³⁰ Legal technicians have been compared to nurse practitioners in the medical profession.

The Supreme Court of Washington adopted Admission to Practice Rule 28, the Limited Practice Rule for Limited License Legal Technicians ("LLLTs") in 2012.¹³¹ Washington LLLTs presently are limited to certain types of family law

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.* at 24.

127. *Id.*

128. *Id.*

129. *Id.* at 25.

130. *Id.*

131. *In re the Adoption of New APR 28—Limited Practice Rule for Limited License Legal Technicians*, No. 25700-A-1005, Order (Wash. June 5, 2012).

matters, but in the future may be able to work in other areas of law such as elder law and landlord-tenant law.¹³² In family law matters, LLLTs may, among other things, obtain facts and explain the relevancy of those facts to the client, inform the client of documents that must be filed and how the matter is likely to proceed, and complete and file approved forms.¹³³ LLLTs cannot represent clients in court or negotiate on behalf of their client with another party.¹³⁴ LLLTs cannot work in a law firm, open their own office, or own a minority interest in a law firm with a lawyer.¹³⁵

The educational requirements for LLLTs include:

- An associate level degree or higher;
- 45 credit hours of core curriculum instruction in paralegal studies as approved by the LLLT Board with instruction to occur at an ABA approved law school or ABA approved paralegal education program; and
- Completion of the practice area curriculum.¹³⁶

LLLTs also must:

- Be at least eighteen years-old;
- Pass a legal technician exam;
- Pass a character and fitness review;
- Complete 3,000 hours of paralegal experience involving substantive legal work in any practice area under a lawyer's supervision;
- Demonstrate financial responsibility (professional liability insurance or proof of indemnification if an employer is a government entity);
- Pay an annual license fee; and
- Complete ten hours of approved continuing education each year.¹³⁷

132. *Promoting Representation Report*, *supra* note 79, at 25.

133. *Id.* (citing Admission to Practice Rule 28(F)).

134. *Id.* at 26 (citing Admission to Practice Rule 28(H)).

135. *Id.* at 26.

136. *Id.* (citing Admission to Practice Rule 28(D); Regulation 3(B)).

137. *Id.* (citing Admission to Practice Rule 28(D); Regulation 5(D), 11(A), 12(A), 14(A)).

In light of the recent establishment of the Washington LLLT program, the current lack of data on the program's effectiveness, and the Bar's potential concerns, the Promoting Representation Subcommittee recommended further study of a legal technician program.¹³⁸

The Promoting Representation Subcommittee's recommendations did not include mandatory pro bono service or a mandatory pro bono hour reporting requirement as part of Delaware attorneys' annual registration.¹³⁹ Some states either have required or voluntary pro bono reporting policies.¹⁴⁰ According to the Promoting Representation Subcommittee's research, many Delaware attorneys have a negative view of a mandatory pro bono requirement.¹⁴¹ There also was concern about forcing attorneys to perform pro bono work and the negative impact that could have on the clients of unwilling pro bono attorneys.¹⁴²

V. THE PATH FORWARD

A. The Draft Implementation Plan

The Commission met on June 21, 2017 to begin prioritizing the Subcommittees' recommendations and pairing those recommendations with the actions needed to accomplish them. While there is much to be done, several of the recommendations already have been addressed. For example, changes already have been made and continue to be made to the Courts' website to make resources easier to find and more accessible. Materials are being translated into Spanish to improve accessibility of resources for Spanish-speaking people, and these materials also will be added to the website in the near term. Additionally, the ODC is offering free CLE programming on useful topics for solo and small firm practitioners.

The Commission reconvened in the Fall and began implementing several priority recommendations, including:

- The Court will partner with Delaware public libraries to improve pro se services by creating programming and outreach materials;
- Planning will begin to convert the law libraries in each of Delaware's three counties into pro se assistance centers;
- The DSBA will continue working on establishing a LOMAP to assist solo and small firm practitioners;
- Plans are underway to promote pro bono service provided by Delaware law firms, initially focusing on family law representation in the upcoming fiscal year through the development of pro bono practice groups, and other projects will include increasing awareness of pro bono opportunities and an annual summit or fair at which legal aid organizations, law firms, law departments, and individual lawyers can gather to share best practices, identify needs and opportunities for service, and celebrate pro bono successes; and

138. *Id.* at 27-28.

139. *Id.* at 21.

140. *See Pro Bono Reporting*, A.B.A., https://www.americanbar.org/groups/probono_public_service/ts/pbreporting.html#noreport.

141. *Promoting Representation Report*, *supra* note 79, at 21-22.

142. *Id.*

- The Pro Bono Subcommittee will create a pro bono challenge for attorneys to meet a clear, measurable, and collective pro bono target. Additional focus will be placed on providing pro bono consumer law representation and continued improvement in data collection and analysis to identify successes in providing services as well as identifying future needs.

B. Implementation Challenges

Funding will continue to be a challenge, particularly given the fiscal issues facing the State. Federal funding is also at risk as the President's budget proposal to Congress would eliminate funding for the LSC in FY 2018. The Chief Justice and other key people wrote to Delaware's congressional delegation to oppose these cuts. LSCD relies heavily on these funds, which constitute a significant portion of the overall funds legal service providers receive.¹⁴³ On July 27, 2017, the Senate Appropriations Committee passed the FY 2018 CJS Appropriations Bill, which would fund the LSC at the current FY 2017 level.¹⁴⁴

1. The History Of Funding Legal Services In Delaware

The first State appropriation to support civil legal services for the poor was in FY 2006 in the amount of \$275,000.00.¹⁴⁵ Funding remained stable between fiscal years 2007-2011, with the exception of FY 2010 when the appropriation dropped slightly to \$233,700.00.¹⁴⁶ In FY 2012, the annual allocation was increased to \$400,000.00 and rose again to \$600,000.00 in FY 2013.¹⁴⁷ The longstanding appropriation for Delaware's legal aid service providers was eliminated in the FY 2018 Budget Act, but other funding (\$540,000.00) was earmarked for FY 2018 only.¹⁴⁸

In addition, the State has provided additional funding through the GIA. The allocation is a "one-time contingency" and must be renewed each year by the General Assembly. Since 2006, the amount has been between \$101,500.00 and \$200,000.00. But, cuts to the FY 2018 GIA reduced funding to all agencies by 20%.¹⁴⁹

143. OFFICE OF MGMT & BUDGET, AMERICA FIRST: A BUDGET BLUEPRINT TO MAKE AMERICA GREAT AGAIN 5 (2017).

144. *Latest Developments*, A.B.A., https://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/access_to_legal_services/legal_services_corporation/latest_developments.html (last visited Aug. 30, 2017).

145. Fiscal Year 2006 Appropriation Act, H.B. 300, 143th Gen. Assemb. § 48 (Del. 2005).

146. Fiscal Year 2007 Appropriation Act, S.B. 350, 143th Gen. Assemb. § 52 (Del. 2006); Fiscal Year 2008 Appropriation Act, H.B. 250, 144th Gen. Assemb. § 50 (Del. 2007); Fiscal Year 2009 Appropriation Act, S.B. 300, 144th Gen. Assemb. § 54 (Del. 2008); Fiscal Year 2010 Appropriation Act, H.B. 290, 145th Gen. Assemb. § 48 (Del. 2009); Fiscal Year 2011 Appropriation Act, S.B. 310, 145th Gen. Assemb. § 46 (Del. 2010).

147. Fiscal Year 2012 Appropriation Act, H.B. 190, 146th Gen. Assemb. § 47 (Del. 2011); Fiscal Year 2013 Appropriation Act, S.B. 260, 146th Gen. Assemb. § 43 (Del. 2012).

148. Fiscal Year 2018 Appropriation Act, H.S. 1 for H.B. 275, Gen. Assemb. § 58(b) (Del. 2017).

149. FY 2018 Grants-in-Aid Act, H.B. 281, 149th Gen. Assemb. § 2 (2017).

2. Proposed Cuts To LSC At The Federal Level

Congress appropriated \$375 million to LSC nationwide for FY 2015, \$10 million more than the previous year.¹⁵⁰ LSC's largest appropriation of \$420 million was in FY 2010; funding has since decreased by 11%.¹⁵¹ LSC's funding request for FY 2016 was \$486,900,000.00, as it was for fiscal years 2015 and 2014.¹⁵² The LSC has requested an increase of a little over \$25 million from their FY 2017 budget.¹⁵³ Their FY 2018 budget has proposed funding for Delaware field grants increasing to \$1,079,092.00 from \$774,187.00 in FY 2017, an increase of 39%.¹⁵⁴ The White House has proposed eliminating funding for LSC in FY 2018, but on July 27, 2017, the Senate Appropriations Committee passed the FY 2018 CJS Appropriations Bill that would fund the LSC at the current FY 2017 level.¹⁵⁵ Much of the LSC field grants go directly to the LCSD which will further reduce the amount of legal assistance to those in need.

3. Greater Pressures On The Court And The Bar To Bridge The Gaps

As State and federal funding wane, there is increased pressure on the Court and the Bar to bridge the gaps. While the Court cannot solve the problem alone, we continue to look for ways to assist where we can. But increased pressures on court operating budgets amidst a struggling state economy means that the courts are also concerned about the ability to manage effectively core functions with diminishing resources.

Notwithstanding those struggles, the Court recognizes that the unmet civil legal need is growing, and Delaware Courts, like courts throughout the nation, are facing the consequences of a system struggling to handle increasing numbers of pro se litigants. In 2013, the Council of Chief Justices and the Council of State Court Administrators released a white paper on LSC funding, describing the impact courts nationwide felt as a result of increased, unrepresented litigants. In addition to slowed court procedures resulting in a backlog of court cases, the white paper noted the difficulty faced by judges across the nation trying to maintain impartiality while trying to ensure justice for the pro se litigant.¹⁵⁶ The impact to the nation's legal system is highlighted in the *Pro Se Report*, which similarly found that, in Delaware, front line court staff report spending more time with pro se litigants without any break in their other duties.¹⁵⁷

150. All LSC budget request information contained in this section can be found at: *FY 2016 Budget Request*, LSC, <http://www.lsc.gov/media-center/publications/fy-2016-budget-request>.

151. *Id.*

152. *Id.*

153. LSC, FISCAL YEAR 2018 BUDGET REQUEST 1 (2017), <https://www.lsc.gov/media-center/publications/fiscal-year-2018-budget-request>.

154. *Id.* at 12.

155. *See supra* notes 144-45.

156. THE CONFERENCE OF CHIEF JUSTICES AND THE CONFERENCE OF STATE COURT ADMINISTRATORS, THE IMPORTANCE OF FUNDING FOR THE LEGAL SERVICES CORPORATION FROM THE PERSPECTIVE OF THE CONFERENCE OF CHIEF JUSTICES AND THE CONFERENCE OF STATE COURT ADMINISTRATORS 3-4 (2013), http://ccj.ncsc.org/-/media/Microsites/Files/CCJ/Web%20Documents/LSC_WHTPR.ashx.

157. *Pro Se Report*, *supra* note 43, at 18-19.

Recognizing the systemic impact and the important and necessary work done by the legal aid organizations in Delaware, the Delaware Supreme Court recently took several steps to improve legal services to the poor:

- The Delaware Supreme Court has contributed \$150,000.00 to the Annual Campaign of the Combined Campaign for Justice; and
- The Randy J. Holland Family Law Chair Endowment Fund (“RJH Endowment Fund”) has been created to honor Justice Holland’s legacy and to give meaning to his deeply held belief that access to justice must not depend on one’s ability to pay. This Endowment Fund will secure funding in perpetuity for an attorney at one of the three legal aid agencies (DVLS, CLASI, or LSDC) to provide legal services relating to family law matters, including domestic violence and abuse and other civil legal problems encountered by indigent families in Delaware. The RJH Endowment Fund has been established at, and will be managed by, the Delaware Community Foundation.

VI. LOOKING INTO THE FUTURE FOR ACCESS TO JUSTICE ON THE CIVIL SIDE

The Commission reconvened on September 18, 2017 during an event hosted by the Delaware Supreme Court to honor the work of the Commission members and to begin the next phase of implementation. The Commission added new membership to lead Access to Justice objectives. CLASI recently worked with James Teufel, Director and Assistant Professor of Public Health at Moravian College, to conduct a study regarding the need for indigent legal services here in Delaware. The study was comprised of two components: (1) an analysis of cases from the perspective of social return on investment—attaching a monetary value to the work done by CLASI; and (2) an analysis of unmet legal needs in the Delaware community, based on a sampling conducted this spring at federally qualified health centers (where poor people often get their medical care). The study should offer helpful guidance as we move forward.

