

**TASK FORCE TO STUDY IMPLEMENTING A  
CIVIL RIGHT TO COUNSEL IN MARYLAND**

*21 May 2014  
9:30 a.m.  
Annapolis, Maryland*

**MINUTES**

**Present:** Robert Neall, chair. Del, Kathleen Dumais, Susan Erlichman, Kathy Howard, Hon. Irma S. Raker, Del. Sandy Rosenberg, Steve Sachs, Lonni Summers, staff, Pamela Ortiz, staff.

1. **Review of Minutes.** The Task Force approved the minutes of the April 24, 2014, meeting.
2. **Framework for Deliberations.** Mr. Neall led a discussion about the framework the group might follow in order to conduct its deliberations going forward. Judge Raker suggested they hear from Ms. Ortiz. Ms. Ortiz noted that in creating its *Implementation Document*, the Maryland Access to Justice Commission identified 17 variables, or questions that would need to be discussed in determine the scope of a right. Members may want to identify some questions to answer, in order to frame its discussions. She noted that at the last meeting Mr. Pollock suggested several work products the task force may want to produce – including exploring pilot programs, feasibility studies, or legislation that expands the right into one or two prioritized areas.

Mr. Neall suggested we explore creating a minimum threshold of legal representation to be provided equally in all jurisdictions. Ms. Erlichman noted we have a spectrum of programs across the state and we do have good information about the scope of services currently available.

Del. Rosenberg suggested we focused on “Where is the greatest need?” and “What benefit would that provide?” From the clients’ perspective that would be the key question.

Mr. Neall noted we may want to think strategically so we are not just dealing with emergency matters, but try to get to the heart of their legal problems.

Mr. Sachs suggested we consider recommending to the General Assembly the creation of a pilot project to test whether the model will work in Maryland. A pilot should test the model in diverse jurisdictions, with the recommendation that once we have findings, it can be made available to others. It is his hope that the solution the Task Force recommends will focus on experienced attorneys, rather than new admittees or less experienced practitioners, in order to be sure that indigent persons are provided quality representation.

Members discussed whether the concept would focus on expanding the existing provider network, and providing it with a larger pool of lawyers to manage, and the funding to do that, or whether the Task Force envisions creating a new entity or structure to administer the right. It was suggested the Task Force could fund a pilot to roll out the model described in the *Implementation* document that indeed suggests building on the current delivery model. Mr. Sachs suggested we build on the existing system, but he suggested Maryland consider establishing a board, or some entity similar to that described in the California Model Acts, which direct traffic, deciding what level of service individuals would be entitled to. Such a board would ensure that additional resources are used to expand services, and are not just used to beef up the budget of existing programs. In the *Implementation* document, the Commission did not recommend the creation of a board but envisioned attorneys determining the level of service required for each individual.

Judge Raker noted a pilot could be a modest initial step, but the Task Force should also identify the needs for the long term.

Ms. Erlichman noted it is important to realize when we talk about the system, we are not just talking about the legal services programs, we are also talking about the private bar in addition to *pro bono*. The Judicare program provides private lawyers paid a low hourly rate to provide representation in certain custody matters. There is a place for new admittees. There are areas of the law that are not particularly complex that are fundamentally important – evictions, for example. We could use the existing system, but add to that and include new sources of representation including areas that would be attractive to the private bar.

Del. Dumais suggested that to ensure we are not creating completely new systems, we should use the existing organization, MLSC, to deliver the funding. The Massachusetts pilots, spearheaded by the Boston Bar Association made use of a range of funding, including foundations. We may want to consider a range of funding solution beyond simply increasing filing fees. One pilot program that has worked in Maryland, is the truancy program which is included in the budget of the Dept. of Juvenile Services. Eventually costs could be included in the Executive Branch or Judiciary budgets.

Del. Dumais serves on the Commission on Child Custody Decision-making in Maryland. In the Fall, the Commission held 5 public hearings across the State, to hear from people who had a custody case. They heard from individuals who were somewhat aggrieved. The majority of individuals had represented themselves before the court. It was eye-opening to hear from them. In Baltimore City, court is often the only time some of these parents, especially fathers, are called into court by the Office of Child Support Enforcement. They feel like the only time the court wants to see them is when they are an “ATM,” but the courts are not helping them get access to their kids. Often there is a financial imbalance between the parents and one parent has a lawyer and the other does not. The Task Force may want to consider joining forces with the Commission on Child Custody Decision-making to make recommendations concerning representation in child custody matters.

Child custody is an area where the court already provides services to aid the parties in making decisions for their children and to ensure the court has the information it needs. The court has an independent obligation to make a ruling that is best for the child.

Mr. Neall noted we have four audiences – the Governor, the General Assembly, the bar and the Judiciary, and the general public. Public education will have to be a part of this. If we don't move the needle there, anything we do subsequently will be harder to do. Many judges wish there would be a way to address the imbalance in the courtroom. The Judicial Institute is aware of the problems that arise with self-representation and has provided some training on this topic.

It was noted that the *Richmond* case is likely to have a significant impact on any proposal the Task Force makes.

Members discussed funding a study of any pilot to help us understand the full impact of providing representation. This might include looking at the financial benefits to clients and the communities in which they live. Ms. Ortiz noted the mismatch in skill sets – few Maryland attorneys report family law as their area of practice, while that is the top area for *pro bono* demand.

Mr. Sachs hopes we end up recommending a pilot that will demonstrate results, highlighting the impact on the justice system and the economic benefits to the state of providing counsel. He recognizes the need for political wisdom, but he is concerned that if we start by constraining ourselves and end up with something not robust enough, we will not see the full benefits. He hopes we begin with something that is robust, although practical, and then begin to explore how to make it a reality.

Mr. Neall responded that is why the nature and extent of the problem should be included in the report, so we never lose sight of the full problem. Others tended to agree that the Task Force should not unnecessarily limit its sights and should keep its eye on the long term results.

Mr. Sachs believes the Judiciary and the Bar will be supportive. He noted he has never met a judge who was not concerned about the problems that arise when indigent persons are forced to appear without counsel. In the *Fraser* case, the MSBA provided a very supportive amicus brief. It was the first time the MSBA had done an amicus brief in a contested case. The ABA has been extremely supportive of the issue, and former ABA President, Michael Greco, got a unanimous vote on the resolution it passed in support of a civil right to counsel in 2006.

Ms. Ortiz suggested the Task Force may want to consider providing an absolute right to counsel to certain special populations – minor or developmentally disabled parents in custody cases or other case types, for example.

Mr. Neall asked how much funding was provided currently for the civil legal aid system. Ms. Erlichman reported that they are making \$16 million in grants per year, and another

\$1.5 million for the Judicare program. The State provides funding for lawyers for children in CINA cases where there is a right to counsel, and parents are represented through the Office of the Public Defender. Excluding the Public Defender system, the current effort is in the nature of \$25 million.

Members also suggested that we want the budget bill to reflect the savings that would accrue from a civil right to counsel, as well as the costs.

Mr. Neall suggested Task Force members focus on a 5-year solution . We want to show if you can solve this problem. He thought it might be reasonable to suggest doubling the civil legal services funding in 5 years.

The group discussed the California pilot created by the Sargent Shriver Act. The real architect was retired Justice Earl Johnson. He was a deputy to Clinton Bamberger when they first created the national Legal Services Corporation, and he took over afterwards. He has been a spokesman for a civil right to counsel for decades. Ms. Gardner was asked to provide additional information. The Act provides \$11 million provided over 6 years. The funds cover significant evaluations and studies, and services will be made through grants made to existing legal services providers. They are looking to start pilots focused on custody, eviction, wills and estates, and adult guardianship. There is not yet a statutory right to counsel in adult guardianships in California.

Mr. Neall suggest we support any recommendation to the General Assembly by finding some other funding sources to cover a portion of a proposed program or project. Mr. Sachs suggested the Baltimore-based Open Society Institute might be a potential funding source. Mr. Neall suggested we go to the counties to seek local participation in this as well.

The Task Force acknowledged there was an emerging consensus to build a pilot and make recommendations that build on the existing delivery system, using MLSC. The group may also want to consider exploring an absolute right to counsel in certain narrow areas, for example where certain people are vulnerable.

Staff will draft the needs statement for the report and share that at the next meeting.

Task force members should forward their suggestions to Ms. Ortiz including priority areas you think should be covered, anything you think should be included in our deliberations, and ultimately in our report.

Del . Rosenberg asked when the work being done across the country took place. It was noted that two studies on the Massachusetts housing pilots have been completed, but all the other pilots discussed are still underway and are not likely to have data for us to use in time for our report.

Judge Raker wanted to know about activity in Canada. Ms. Gardner and Ms. Erlichman will check on any efforts in Canada.

- 3. Next Meeting.** The next Task Force meeting will be on **June 25, 2014, at 9:30 a.m.** at the offices of the **Maryland Access to Justice Commission, AOC Annex, 2001 E/F Commerce Park Drive, Annapolis, MD.**