

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

*25 June 2014  
9:30 a.m.  
Annapolis, Maryland*

**MINUTES**

**Present:** Hon. Robert Neall, Chair. Kathleen Dumais, Susan Erlichman, Kathy Kelly Howard, Hon. John Morrissey, Hon. Irma S. Raker, Hon. Samuel Rosenberg, Senator Robert Zirkin, Lonni Summers, staff, Pamela Ortiz, staff.

1. **Welcome and Introductions.** Chairman Neall welcomed Chief Judge Morrissey who replaces former Chief Judge Clyburn on the Task Force. Sen. Getty is no longer a member of the Task Force. Ms. Summers will be leaving the Maryland Access to Justice Commission to take a position with the Maryland Volunteer Lawyers Service.
2. **Minutes.** The minutes of the May 21, 2014, meeting were approved.
3. **Discussion of the Draft Statement of Need.** Ms. Ortiz noted that she will be updating the footnotes that reference testimony provided to the Task Force with additional references to the studies cited. Ms. Ortiz distributed comments to the draft provided by Sharon Goldsmith at Kathy Howard's request. Judge Raker noted that the additional text Ms. Goldsmith provided referenced a study of consumer cases, but did not provide a footnote and she requested that a specific footnote be added.

Chief Judge Morrissey noted that, as a judge who sat for years in Prince George's County, the area he feels is in the biggest need of counsel is domestic violence. Ms. Ortiz noted that the Judiciary has used federal funding in the past to expand the court-based protective order advocacy programs. The courts currently host on-site domestic violence legal services programs in about 17 court sites. The Task Force noted that in these cases we would need to be able to offer counsel to both sides.

**Housing.** The Task Force discussed whether we could identify a subset of housing cases that might be included, to narrow the focus. It was suggested we not focus on failure to pay rent cases. People appear in fewer than 3% of those cases. There is limited need for representation unless there is a real substantive issue between the landlord and the tenant, for example rent escrow, housing code violations, etc. She suggested the Task Force focus its efforts on those cases. Judge Raker asked whether any landlords would ever qualify for representation. There are small, single property landlords, people who take people in, for example, or those who inherit properties or own a single rental unit. Ms. Howard thought we would get less resistance if we have a way to balance the provided representation. Ms. Erlichman noted we have an unusual summary ejection system. Maryland courts act as a collection agency for landlords. There are 670,000 rent cases each year and providing representation in those would be a large undertaking.

Affirmative rent escrow cases are fairly rare. More often, the tenant raises a rent escrow defense in the failure to pay rent case. If a defense is raised, the rent case is postponed. The housing inspector does an inspection, and the case is reset for trial. That is the juncture at which it would be useful to appoint counsel. It is not handled identically in all jurisdictions, but it is similar. In Baltimore City a separate court handles the rent escrow matter, but in Prince George's County it is kept on the same dockets. Chief Judge Morrissey said many cases start out with a rent escrow issue, but you lose jurisdiction because they don't pay the money into the escrow account. It is a remedial measure, and in a majority of the cases, the landlords do fix the issues. Then it is up to the judge to decide whether to discount the rent at that point.

Mr. Neall suggested we consider recommending a pilot that builds on the existing grant-funded delivery system. The Commission's *Implementation Report* recommended we build on the existing delivery system, using grant makers like MLSC to administer the program by issuing an RFP and soliciting proposals from providers. Judge Raker wanted to know how this would differ from just adding another program.

Mr. Neall suggested we fully lay out in the first section of the report the nature and extent of the full program. Then we can narrow the recommendations to make them feasible at this stage. Del. Rosenberg thought we could include in the legislation something that requires the Governor and Legislature to review the proposal three years later, to determine next steps. That would require the State to look at it again and assess the impact of the initiative.

When we say you have a civil right to counsel, does this mean you have an attorney going in to court with you, or is it a brief advice service? It is to provide counsel, but only where full representation is necessary. Ms. Erlichman noted the right should be clearly defined so that the person actually has access to the representation we intend. She suggested we be sure to do a thorough evaluation so we can assess the results.

Del. Dumais noted that in at least certain areas this Task Force should recommend a right to counsel when you walk into court, if you can't afford it.

Judge Raker suggested we focus on custody or domestic violence issues for the next meeting. We could ask staff or task force members to look at models around the country. Who is doing it, how are they doing it, how is it implemented, and present some of that information, and see whether we could even do both of those.

Ms. Ortiz will look at custody and domestic violence. She will examine pilot projects in these areas, how they are operated, and how much they cost. We will need to structure it so it feels like a right and not just the infusion of resources.

Mr. Neall noted we would need to be able to explore why we are choosing the areas we have selected.

Chief Judge Morrissey noted that it was very challenging for judges to make effective child custody decisions in domestic violence cases. There is limited time, limited evidence, and the children are not present. Having counsel in those matters would be very helpful. If the parties have counsel, they can address the holistic issues affecting the family. Ms. Erlichman asked whether there was a substantial injustice if one side is represented and the other is not. Chief Judge Morrissey says it is always easier if there is an attorney involved, but when both parties are represented, the parties do not raise critical and relevant issues. Where one attorney is involved, the represented person is more likely to prevail because they know how to meet the burden and make their points. There is an imbalance in those cases.

Statements in domestic violence protective order cases, albeit civil, can have criminal consequences. It is one reason respondents might warrant having counsel in these protective order cases.

Ms. Ortiz will provide some background information on pilots in each of the basic human needs areas. At the next meeting the task force will have a discussion about each of those five areas. Ms. Erlichman asked to make sure we look at caseloads and statistics in the cases where the pilots are being done. She notes San Francisco has very few eviction cases each year.

Del. Dumais noted the Child Custody Decision-Making Task Force has a report due in December and there will probably be a draft custody statute it will recommend. There may be an opportunity to dovetail with our task force.

4. **Next Meeting.** The Task Force will hold its next meeting on **July 30 at 1:00 p.m.** at the Judicial Education & Conference Center (JECC), 2009 Commerce Park Drive, Annapolis, Maryland.