

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

*30 July 2014  
1:00 p.m.  
Annapolis, Maryland*

**MINUTES**

**Present:** Robert Neall, Chair. Susan Erlichman, Hon. John Morrissey, Hon. Irma S. Raker, Del. Sandy Rosenberg, Stephen H. Sachs, Kathy Howard, Del. Kathleen Dumais, Pamela Ortiz, staff.

Guests: Lorenzo Bellamy, Camille Fesche, Deb Gardner, Lou Gieszl, Susan Russell, Drew Snyder.

1. **Welcome and Introductions.** Mr. Neall welcomed participants and guests. Members and guests introduced themselves.
2. **Review of Minutes.** The minutes of the June 25, 2014, meeting were approved.
3. **Pilot Projects.** The Task Force reviewed materials summarizing national efforts to develop civil right to counsel pilot projects.

Ms. Gardner noted, in regards to Illinois, that the former Chief Judge in Illinois was very supportive of the pilot idea. That person's term ended, and the new Chief Judge is not supportive so the project is running into trouble.

Texas had difficulties because they did not include their local providers and courts in planning, and they did not have a good data collection method in place.

Reasonable caseloads and adequate funding have a significant impact on the quality of representation.

Task Force members also discussed Maryland's Judicare program. The program serves people statewide. Providers assign income-eligible clients to attorneys who are paid a reduced fee with a cap. Attorneys who reach the cap may request additional funds after providing 5 hours of pro bono service in the case. The program statistics reflect pro bono service offered through the program, although it was noted that Judicare cases are often coupled with a separate pro bono referral to that attorney, as a condition of participating in the program. Ms. Erlichman reported that they did a recent survey of participants. Some report they are finding it difficult to find attorneys to do these cases. Providers recommend raising the rate and raising the cap to help them recruit attorneys and place clients. Some recommend attorneys receive mentoring. Currently, those who are not experienced attorneys must be working under the supervision of someone who is. Ms. Erlichman thought we would need to make changes to the model if we were to significantly expand it, to perhaps include a staff attorney component.

Mr. Neall noted we could include recommendations to expand an existing program and/or pilot a new one. Any pilot we propose should have a meaningful evaluation from which you could derive significant data.

Judge Raker suggested the Task Force's goal is to look at a very broad need, which might not be achievable right now. She suggested the Task Force articulate recommendations that point to the long-term goal, not just create one more program. California's Sargent Shriver Act – which acknowledges the broader need and funds different kinds of pilots -- seemed closest to our goal.

Chief Judge Morrissey raised the issue of the “silver tsunami,” the rising tide of aging Baby Boomers, and suggested we may want to consider looking at issues growing out of that phenomenon, for example, guardianship and adult mental health.

Mr. Sachs suggested we consider multiple areas in which to recommend pilots. We will also need to be geographically balanced.

Ms. Ortiz suggested the Task Force might package whatever it recommends within the umbrella of basic human needs, to follow the recommendations of both the ABA and the Maryland Access to Justice Commission.

Del. Rosenberg suggested that the proposal include a self-generated next step, or a required process that will automatically be required to ensure the initiative has legs.

Ms. Gardner noted that there is a statutory right to adult guardianships in Maryland, but there are other issues that confront seniors. New York has explored but not yet adopted a right to counsel for senior citizens in eviction and foreclosure proceedings. It is a basic human need, but it is a manageable slice.

Ms. Gardner noted there is a national judges' manual summarizing the full range of existing rights to counsel which should be available soon.

Mr. Sachs suggested when we create these models, we not be restrictive in terms of case type, but that it reflect the broad notions in the ABA report, and leave it to the providers, whoever we decide they are, how it is implemented. He hopes we are not planning to create some type of new bureaucracy.

Chief Judge Morrissey noted that Prince George's District Court operates two full-time dockets to handle the domestic violence caseload, which is extraordinarily heavy.

Mr. Neall suggested a “three-gear transmission: “ i) Expand an existing program; ii) Create an expansion pilot; and ii) a research project. This might include choosing a new area and studying it to determine the impact. There are some areas that are very seriously underfunded that address basic human needs, that if enhanced, would start to solve some problems.

He noted we do need a public policy statement about what this is about. We also need a revenue source.

4. **Funding and Broader Considerations.** Judge Raker wondered if there was any sentiment for proposing a bill similar to that passed by California. Susan Erlichman suggested we select areas that are sympathetic.

Del. Dumais noted that MLSC it is funded as much as feasible at this time, using existing filing fees. We have one of the best managed statewide funding resources. Some may say, what else do you want? Del. Dumais thought we were very unlikely to get an additional filing fee surcharge.

One member asked whether the Judiciary could request funds for a broad purpose, without having the Legislature direct specifically how those funds were used. It was noted that since *Richmond*, the ability of the courts to assert a separation of powers “request” and expect it to be honored is diminished. Those types of arguments generally do not do well in state legislatures. With MDEC coming online, too, the Judiciary and sheriff’s offices may need to pursue filing fees as well.

Currently MLSC receives the proceeds from the filing fee surcharge, the reduced IOLTA funds, and now \$ 1.5 million from the state’s Abandoned Property Fund.

It was suggested the Task Force could consider listing the full range of options with some specific recommendations. These might include:

- i. An additional filing fee increase.
- ii. Retaining the existing surcharge, even if interest rates increase, by lifting the sunset now.
- iii. Expanding the Abandoned Property Fund appropriation.
- iv. Identifying another funding stream.

Del. Rosenberg stated the Task Force really can’t punt on funding and will need to identify the source. It will be more palatable to ask for General Funds if the lawyers are also contributing. Ms. Howard noted that would be a hard sell, if you add a funding component that comes from lawyers.

Mr. Neall thought it might easier to pursue incremental progress rather than an omnibus bill. If we could find a revenue source, and phase in over 3 or 4 years, there might be a chance of making some progress. He thought it might be reasonable to propose to the new Governor doubling the existing effort.

Ms. Gardner noted that if we could simply institutionalize the revenue for civil legal aid and ground it in the General Fund, that alone would be a significant improvement.

The Task Force discussed the benefits of making a proposal that is just a budget item, and not a separate bill. The Governor could put it in, although the Legislature can take it out. A proposal to change the fees would have to be a bill. It was suggested that we at least ask that the Task Force at least recommend that the sunset on the fees be lifted.

Mr. Neall wondered if the new gaming industry might be a potential revenue source.

Mr. Sachs asked that Mr. Neall sketch out what he thinks the plan should look like, and then let the Task Force begin to review it.

Mr. Neall asked whether there was a hierarchy of human needs ? Do we want to prioritize those? Mr. Sachs suggested that we not prioritize, but spread the resources across the State, and let local providers determine the need.

Mr. Neall still would like to see a map that identifies the impact of current funding and how a proposal might have an impact on the different regions of the State. It might reflect self-representation rates, legal aid programs, pro bono programs, and the impact of the lack of counsel (costs of homelessness, cost domestic violence).

Mr. Neall and Ms. Ortiz will collaborate on a draft and distribute it for review.

- 5. Next Meeting.** The Task Force will hold its next meeting on **August 25, 2014, at 1:00 p.m. at** the Judicial Education & Conference Center, 2009D/2011D Commerce Park Drive, Annapolis, Maryland.