

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

*25 August 2014
1:00 p.m.
Annapolis, Maryland*

MINUTES

Present: Robert Neall, Chair. Hon. Kathleen Dumais, Susan Erlichman, Hon. Guy Guzzone, Kathy Kelly Howard, Hon. John P. Morrissey, Hon. Samuel I. Rosenberg, Stephen H. Sachs, Ryan Lhotsky (for Sen. Zirkin), Pamela Ortiz, staff.

- 1. Review of Minutes.** The minutes of the July 30, 2014, meeting of the Task Force were approved.
- 2. Draft Recommendations.** The Task Force reviewed draft recommendations provided for discussion. The draft had been prepared by Mr. Neall and Ms. Ortiz, based on prior discussions of the Task Force. Members should feel free to discuss and revise the proposal. The recommendations are intended to be the 2nd part of the report, which will also include the Statement of Need discussed at an earlier meeting. The two project proposals included with the recommendations were intended to identify one area that focuses on a statewide expansion in a single subject matter area (domestic violence), and one proposal that envisions a pilot project in a single jurisdiction, or subset of jurisdictions. The models also reflect one which is primarily a staff attorney model and the other which envisions a significant role for the private bar.

Mr. Sachs suggested the final draft should include a broader statement about the importance of a civil right to counsel, drawing upon the ABA Resolution. The preamble of the report should address the importance of having counsel and the impact of counsel.

Task Force members discussed the feasibility of pursuing funding to expand a civil right to counsel during the next or a future legislative session.

Ms. Erlichman noted that the information about the Judicare project needs to be corrected to be more accurate. She reported that some of the current Judicare providers report they are placing as many cases as they can given the number of attorneys available. The model will need to be modified if it is to be successful on a larger scale. We need to consider ways to engage more attorneys who are willing to do family law. If we pursue the proposal regarding domestic violence cases we will need to carefully address conflicts of interest. Ms. Erlichman noted that in identifying funding for the pilots we would need to assert that funding would have to be over and above the funding already provided for civil legal aid.

Delegate Dumais noted it will be important to extend representation to respondents in domestic violence cases. The Task Force discussed the wording of the domestic violence proposal in the recommendations which suggested income-eligible respondents would be entitled to representation only when the program provided representation to the petitioner. After a discussion, the Task Force determined the language should be modified to reflect that in domestic violence cases, all income-eligible petitioners as well as respondents would be entitled to counsel.

Del. Rosenberg noted the report will need to identify a funding source. The Task Force discussed the process for including new budgetary items in the budget and the role of the new Governor. Mr. Neall suggested that after the election, he and others should plan to brief the newly elected Governor and legislative leadership so they are aware of the recommendations. Task Force members discussed the need to ensure that funding for this critical function come from the general fund, and ultimately determined it would be better not to identify a new special funding source.

Chief Judge Morrissey noted that it would be up to Chief Judge Barbera to determine what, if any, role the Judiciary would play in pursuing the recommendations. He indicated his support for the expansion of access to representation for domestic violence.

Ms. Howard suggested the proposal envision a role for the private bar in the new programs or pilots.

Del. Guzzone noted that the Governor must include in his or her budget any monies requested by the Judiciary. The Judiciary submits its budget each year by November 1.

It was noted that we want to ensure new monies do not supplant existing funding for civil legal aid. The Maryland Legal Services Corporation (MLSC) fund is a special fund that includes only funds from the Interest on Lawyers' Trust Accounts (IOLTA) program, the filing fee surcharges and an appropriation from the Abandoned Property Fund. The MLSC fund should probably remain separate from any new monies that are requested.

Task Force members discussed the custody proposal. It was noted that the phrase "subset" to describe Judicare is misleading. The project now supports any contested family law matter. Del. Dumais suggested we may get more support for a proposal that is broader and serves more jurisdictions. She noted that in their public hearings, the Custody Decision-making Task Force noted the experience of families in each jurisdiction is very different. A broader pilot would permit us to explore the full impact of providing counsel in different settings. It was suggested we consider including a staff attorney component as well as a private bar model, to address the difficulties programs face in finding private attorneys to handle family law cases.

The Task Force resolved to amend the recommendations as follows:

- a. Delete Recommendation 1. While all members were supportive of the proposal and believed the General Assembly should lift the sunset on the filing fee surcharges, it was felt this did not need to be included in the current report.
 - b. Reword Recommendation 2 to remove the word “pilot” as this would represent an extension of a civil right to counsel to all income-eligible petitioners and respondents in protective order cases in the state. Because the proposal anticipates expanding funding to meet the full need over four years, the proposal should reference the establishment of a right to counsel in this area as the ultimate goal, without creating a statutory right at this time. The proposal should recommend that a certain percentage of funding should be directed to providing representation for respondents in each of the first three years, until the program is fully funded in the fourth year, by which time all income-eligible respondents, as well as petitioners, should be able to obtain counsel.
 - c. Revise Recommendation 3 to dovetail with the goals of the Custody Decision-making Task Force. Del. Dumais will provide some language we may want to include. In addition, expand the proposal to permit the creation of pilot programs in Prince George’s County, Baltimore City and either the Eastern Shore or Western Maryland. Add a second component of this recommendation, to create an incentive for attorneys to enter family practice, and to provide support for those who do. Consider offering a course similar to the Rita Rosenkrantz Basic Family Law course which is offered by the Montgomery County Bar Foundation. Young attorneys who take the free course must promise to take a pro bono course. A statewide initiative based on this model might be managed by the Pro Bono Resource Center of Maryland. It would provide a way to strengthen the family bar, and incorporate *pro bono* practice into the proposal.
 - d. Delete Recommendation 4.
 - e. Revise Recommendation 5 to recommend the Governor be required to appoint a legislative work group to oversee the implementation of the recommendations in the report, assess the programs and pilots, and report back to the General Assembly. The Task Force discussed several methods for ensuring an effective evaluation but determined it would be best to allow the new work group to determine the best way to proceed in this regard.
3. **Next Meeting.** The Task Force will hold its next meeting on Wednesday, September 24 at 9:30 a.m. at the Judicial Education Conference Center, 2011 Commerce Park Drive, Annapolis, Maryland. The purpose of the meeting will be to finalize the Task Force’s report for submission by the October 1 deadline.