

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

24 September 2014

9:30 a.m.

Annapolis, Maryland

MINUTES

Present: Robert Neall, Chair. Del. Kathleen Dumais, Susan Erlichman, Del. Guy Guzzone, Kathy Howard, Sen. Richard Madaleno, Hon. John P. Morrissey, Hon. Irma S. Raker, Del. Samuel I. Rosenberg, Stephen H. Sachs. Pamela Ortiz, staff.

1. **Review of Minutes.** The minutes of the August 25, 2014, meeting were adopted.
2. **Discussion of the Draft.** Mr. Neall invited Task Force members to discuss the body of the draft report.

Ms. Ortiz was thanked and acknowledged for her work on the draft.

Mr. Sachs suggested the Task Force strengthen the report by adding a paragraph with statements by judges willing to articulate their support for a broader civil right to counsel. Chief Judge Morrissey noted judges are limited by the ethical rules in the actions they can take on a non-Judiciary commission or task force. He can participate in the task force as he is appointed by the Chief Judge, but he cannot vote on recommendations to the General Assembly or the Governor. The same limitations apply to retired judges who are subject to recall.

Ms. Erlichman reported that at the recent event celebrating the 40th Anniversary of the federal Legal Services Corporation, one panel included 10 state chief justices and each spoke powerfully about the need for access to representation. She suggested the proceedings of that event may provide language demonstrating the benefit of a broader right to counsel from a court perspective.

Ms. Ortiz was asked to add to the report information that demonstrates the benefit to court operations from providing a broader right to counsel. It was suggested she draw from the earlier report of the Task Force on Self-Representation in the Maryland Courts and other existing sources on this point.

Ms. Ortiz will draft an Executive Summary for the report. It was suggested that in the Executive Summary, the proposal for pilots should be highlighted.

The following changes were made to the text of the report:

- Page 1, first paragraph. Rewrite the sentence ending “would not have a right to legal representation.”
- Page 2, first paragraph. Clarify the reference to *Airey*. Provide additional information about the nations that have a broader right as the existing statement and cite are broad and may be misleading. Mr. Sachs noted the Ukraine fits here as well. The group discussed whether to include information about the right to counsel in other nations. It was decided to leave this section in, but revise the language to be more accurate.
- Page 2, third paragraph. Always refer to the right to counsel at public expense, not generally.
- Page 3, first paragraph. Add cites to the New York and Oregon statutes.
- Page 3. Revise the second sentence to indicate attorneys help their clients “fairly adjudicate” these issues.
- Page 4, first paragraph, last sentence. Insert the word “civil.”
- Page 4, third paragraph, first sentence. Insert the word “clients.”
- Page 5, second paragraph. Check the data provided from cites 21, 22.
- Page 5, fifth paragraph. Check the data provided from cite 29.
- Page 6, second full paragraph. Replace the phrase “meta-analysis” with a synonym.
- Page 7. Add a footnote or more detail about the filing fee surcharges. Also add a footnote at the end of the third paragraph.
- Page 8. It was noted that the courts do not have income information about all court users so we extrapolate from data about the general population, the numbers of individuals who are turned away, and the demands on existing programs. The federal Legal Services Corporation (LSC) did a study of LSC-funded programs which found that 50% of applicants for their help are turned away.
- Page 9. Reference Just Advice under clinics.

- Page 11, second full paragraph, second sentence. Change “only about” to “approximately.” Add a topic sentence to clarify what we are saying in that paragraph. We are really saying that pro bono lawyers have a larger impact than what you might see from just the cases in court.
- Page 11, first paragraph, first bullet, last line. Rewrite the last sentence and the third bullet.
- Page 12, chart. Reformat so it looks good in black and white. It was suggested we breakdown the information about family, but the Maryland Legal Services Corporation (MLSC) does not have more nuanced case type data for the types of cases closed.
- Page 13, first sentence. Add the word “persons.”
- Page 14, Chart. Ms. Erlichman will follow up to see if the data from Anne Arundel County is skewed because of the District Court Self-Help Center. We may need to provide a footnoted comment. Change “total” to “state.”
- Page 15. Change the last sentence to add “public interest” and “provide their services”
- Page 16. Renumber third bullet #1 and the fourth bullet #2. Make the bullets scales of justice.
- Page 17. Modify the recommendation to read: “Create a right to counsel in civil domestic violence cases through a four-year, phased-in expansion of existing programs that provide representation to income-eligible petitioners and respondents.”
- Page 18. Remove the floating parenthetical. Also spell out the CASA program referenced.
- Page 19, first full paragraph, first sentence. Rewrite it or take out the reference to “the second state.” Rewrite the end of the paragraph to reference the research supporting the statement. Delete the last sentence on the page.
- Page 20. Change the recommendation to read, “Establish a right to counsel pilot program in child custody matters...”

- Page 20. After the first sentence, add a sentence referencing the benefits for child well-being. In the second sentence, change “parent” to “raise.” Modify the last two sentences in the first paragraph to clarify the point.
- Page 20, second paragraph. Delete the word “only.”
- Page 20, third paragraph. Replace the first sentence as follows. “The Judicare Family Law Project, an existing Maryland model, should be used...”
- Page 21, second paragraph. “The same study” may need to be changed to an “earlier study.” Ms. Ortiz will verify the relevant cites.
- Page 21, third paragraph. Second sentence. Move the ending phrase to the beginning of the sentence.
- Page 22, third paragraph, last sentence. Change “may” to “will.”
- Add a sentence to clarify that the \$320 cost per case is suggested for the pilot, although it is probably low, but the project would permit us to evaluate the cost and the need.
- The group had a discussion about whether to keep all three custody pilot jurisdictions in the mix, whether to phase it in one jurisdiction at a time, or whether to choose different sites.
- Ms. Erlichman was asked whether MLSC has the administrative capacity to evolve the Judicare program. Ms. Erlichman responded that MLSC does have the capacity to build the program envisioned.
- Judge Raker suggested that any reference to a website include an archive.
- Del. Rosenberg asked whether we should identify the source of funds. Mr. Neall recommended the task force not address this issue, as it is a core function and should be generally funded.

A motion was made to adopt the Report with these changes. The motion was seconded and passed, adopting the report.

The final version of the report will be distributed. Members were asked to contact Ms. Ortiz with any final corrections. If substantive changes are required we will schedule an additional meeting or conference call.

The group held a discussion about whether to pass a bill or just put it in the budget. Del. Rosenberg suggested a bill hearing would help focus the legislature on the issue. In addition to approaching the new Governor for support of these recommendations, it was suggested Mr. Frosh be approached as this may be of interest to him if he is elected as the new State's Attorney. Tim Maloney was another person who may be helpful in obtaining the Governor's support.

Judge Raker asked whether it would be premature to think about asking the Ravens to support the domestic violence project. Members responded that the idea of a civil right to counsel is built on the premise that a right would be a public obligation and would require public investment. Although it was noted that if some private funding were available for an initial investment, it might make the project more palatable to the General Assembly.

3. **Next Meeting.** The meeting was adjourned and no additional meetings were scheduled at this time.