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Access to Civil Justice in the District of Columbia

A Case Study of the District of Columbia Access to Justice Commission

By Peter B. Edelman

Access to civil justice for lower-income residents of the District of Columbia is a high priority for leaders of the bench and bar in our city. In February 2005 then-Chief Judge Annice M. Wagner of our D.C. Court of Appeals, along with her colleagues, issued an order creating the District of Columbia Access to Justice Commission. How our commission came to be, and what it has accomplished, constitutes a case study that we hope is of interest to states considering the creation of such a

commission and to commissions already in existence as they continue their work.

The order did not just happen. It resulted from a timely confluence of forces. As readers of this journal know, the state chief justices had decided a few years earlier to make the creation of state access to justice commissions a priority. Shortly after that, legal services providers in our city—we have more than two dozen different organizations—reached out to leaders of the D.C. Bar and the D.C. Bar Foundation to propose approaching the Court of Appeals about establishing a local commission. The response from the private bar was not unanimous. Some key people were skeptical about the value of inserting yet another body into the mix. What would it do? What would it add? What difference could it make? Nonetheless, the players decided to approach the court.

Chief Judge Wagner saw the possibilities. Extensive conversations produced an agreement to create a seventeen-member body, with representatives from the bench, the bar, the bar foundation, the provider community, clients, and civic and community leaders from other areas and professions. I was asked to chair.

The court's order creating the Access to Justice Commission charged it with four tasks: (1) to establish an inclusive and coordinated planning process; (2) to improve coordination and support for civil legal services; (3) to propose rules and systems changes in courts, administrative agencies, and legislative bodies to improve access; and (4) to pursue increases in funding and volunteer resources for the District's civil justice network.

Three basic sets of facts were clear. First, the District has an unacceptable level of poverty and an insufficiency of legal representation for the poor. Second, the cadre of full-time lawyers who represent the poor—one of the stronger in the country in terms of both quantity and quality—is nonetheless much too small in relation to need. And third, while private practitioners in the District have a robust pro bono commitment and, through their firms and individually, they contribute considerable funds to support the full-time providers, both the volunteer person power and the funds con-

tributed fall considerably short of what is potentially possible. Jurisdictions across the country face similar challenges.

Three-plus years into the life of the commission (it was established for an initial three-year period and has recently been extended on an open-ended basis by current Chief Judge Eric T. Washington), there are tangible accomplishments, a sense of purpose and mission, and a shared belief that the commission has a unique role.

What is unique is that the commission is a place where providers, bar leaders, and judges sit as peers to discuss and pursue change about issues of mutual concern. The commission has no power to make anyone do anything—it does not dispense funds, and it has no regulatory power—but the prestige of its members, both individually and collectively, has given it cachet in the broader legal community.

The leadership of the bar, the bar foundation, and the courts all call on the commission for consultation and partnership. Because of the commission's cross-cutting membership, providers find it easier to raise concerns with the courts about issues like procedures in landlord-tenant court, problems with the system of language interpreters, access for the disabled, and the quality of information provided to pro se litigants. Successive bar presidents have asked the commission to join an initiative to increase the number of firms signing the pro bono "pledge" to devote an annual minimum percentage of billable hours to pro bono work. The commission and the bar foundation consult regularly on strategy, both about funding and about deployment of resources.

Funding

Not surprisingly, the obvious first priority for the commission was increasing funding for civil legal services. The commission itself is financed entirely by law firms, with rent-free space contributed by Venable LLP. The commission has a full-time and absolutely superb executive director, Sunil Mansukhani, a former Justice Department attorney. The firm of DLA Piper has served as pro bono counsel to the commission from almost the very beginning, contribut-

ing thousands of person-hours to a multitude of research projects, especially a sophisticated mapping of legal needs of low-income residents.

Public Funding

In the District, funding for civil legal services had in the past come mainly from law firms and individual lawyers, Interest on Lawyers Trust Accounts (IOLTA), and the national Legal Services Corporation. What struck us almost immediately was that other than dispensing a modest amount of federal funding for lawyers serving such constituencies as the elderly and victims of domestic violence, the District government had never appropriated any city funding for civil legal services. (The Public Defender Service, which represents criminal and juvenile clients, and the Children's Law Center, which works in the area of child welfare protection, each have unique arrangements that make the federal government their principal funder.)

We learned that forty-three states were, in one form or another, providing funds for civil legal services, which added up to about 20 percent of the total funds going into the system nationally. It appeared that no one had ever asked the District to step up to the plate. We did a study of the most pressing needs in our jurisdiction and the capacity of our providers to make good use of a significant infusion of public funding, and we asked then-mayor Anthony Williams to include \$6.2 million in his budget for fiscal 2007, to be devoted primarily to out-stationing poverty law offices in low-income neighborhoods and beefing up representation of tenants in the D.C. Superior Court's Landlord and Tenant Branch (landlord-tenant court). Our research had revealed that only twelve lawyers were located in the poorest (and most isolated) section of the city east of the Anacostia River, and also that 98 percent of the 49,000 tenants sued annually in landlord-tenant court were unrepresented by counsel.

The story of the process that ensued is worthy of an article in itself, but at the end of the day, with special leadership from then-Ward 3 Council Member Kathy Patterson, the City Council appropriated \$3.2 million to our city's bar foundation, to be re-granted through a competitive process. Chief Judges

Eric T. Washington and Rufus King III of the appellate and trial courts testified—very helpfully—before the D.C. City Council as to the legal needs in the city. The bottom line was thirty-one new lawyers, or an increase of about 25 percent in the number of full-time attorneys representing low-income people. The number of poverty lawyers working east of the Anacostia River doubled. Seven attorneys hired with the public funds are now stationed in landlord-tenant court. We also worked with the court to develop an administrative order that allows lawyers to make temporary appearances on behalf of pro se litigants. All of the grantees of the funding were urged to structure their proposals to achieve a maximum multiplier effect in enlisting pro bono involvement of private practitioners in the work. So we anticipate that the ultimate payoff from the public funding will be much greater than the direct work of the thirty-one new lawyers.

Three of the especially creative ideas are worth special mention. Legal Counsel for the Elderly is using some of the funds for a lawyer who visits the homebound elderly to bring legal services to them. The Children's Law Center has teamed up with the Children's National Medical Center to have lawyers on-site at the medical clinic so that a family's medical and legal needs can be addressed simultaneously. University Legal Services hired a lawyer to work at the D.C. Jail to identify inmates with mental health issues that need attention.

The funding was renewed in fiscal 2008 by inclusion in the first budget of Mayor Adrian Fenty, and it was renewed once again for fiscal 2009 with a \$400,000 increase proposed by the mayor himself.

The city's \$3.2 million in funding included two important components: a loan repayment assistance program for poverty lawyers who are District residents, with complementary funds raised privately to support lawyers working in the District but living in Maryland or Virginia, and a shared interpreter bank to provide language interpretation for clients to be able to communicate effectively with their lawyers outside of court (the courts take responsibility for interpretation in court). Indispensable leadership for the enactment of the loan repayment assistance program came

from Council Public Safety and Judiciary Committee Chair Phil Mendelson, a D.C. councilmember who has also been a key supporter of the overall funding effort.

IOLTA

Consulting with the D.C. Bar Foundation, we found that we could be supportive of efforts to improve the interest rates paid on IOLTA accounts. Joining with the bar foundation, we pressed banks that were paying very low interest rates on the escrow accounts, and we gave public recognition to banks that raised their rates. We are continuing to urge law firms to deposit their escrow funds in banks that pay the highest rates. And a proposed comparability rule is currently working its way through our local processes to our D.C. Court of Appeals. If adopted, it will require that banks pay interest rates that are comparable to what they pay on accounts of their regular business customers. About nineteen states have already taken this step.

Law Firm Giving

A key project, now in progress, is the development of a strategy to induce firms to increase their financial support for the D.C. Bar Pro Bono Program, the D.C. Bar Foundation, and the individual providers. With the pro bono help of the professional services firm of Ernst & Young, we asked all of the providers to disclose all of the law firms that donate funds to them and the amounts donated. Ernst & Young then consolidated the information, removing the particulars as to which provider had received funding from which law firm, so that we now have a list of the total giving of each law firm in the area of civil legal services for low-income people. Just what we will do with the information is still under discussion, but at the least it should be helpful in letting individual firms know informally that they are not doing as well as some of their competitors.

The System: Mapping of Needs and More

Mapping Needs

At our very first meeting, Robert Wilkins from Venable LLP asked, innocently enough, whether we knew what the legal needs are in our city. He was told that the bar founda-

tion did a legal needs study in 2003 and discovered that only 10 percent of the legal needs of low-income people in the District are being met. Robert asked if anyone knew in any more detail about the underlying specifics. This exchange led to what has turned out to be a major project, made possible only because of a generous contribution of time by lawyers at DLA Piper.

We decided not to replicate the mapping-of-needs studies that other cities have done, in part because we did not have the resources to do telephone polling and focus groups. Instead, we did four things. We asked the legal services providers to keep track of everyone who walked in the door seeking help during a one-month period and to use a common protocol to obtain information from these individuals. Second, we asked the legal services providers about the legal needs of their clients and the providers' capacity to meet those needs. Third, we interviewed about two dozen health and human services providers about the legal needs of their customers and the providers' knowledge of the legal services system. Fourth, we gathered court statistics and data from other sources that would help illuminate the areas of greatest legal need.

The results were published early in October of this year, and they are rich with detail. We have learned that our providers turn away more requests for help in family, housing, and consumer matters than in any other area and that employment and immigration are other areas the providers say are the most under-addressed or where the need is increasing. Large percentages of individuals appear pro se in family court matters of all kinds, landlord-tenant court, probate, and in situations of domestic violence. As important as the quantitative findings is the full discussion of the nature of the needs in each area.

We think that the report will continue to be of value to the entire legal community locally, and we hope it will be a model for others around the nation. We see it as a touchstone for planning and for setting priorities as we move ahead.

One challenge that jumps off the pages of the report is the need to reach out

to health and human services providers around the city. We discovered that they know next to nothing about the world of lawyers. That is, of course, our fault. So we need to undertake a public education campaign to inform the non-legal providers about legal services, to get them to include questions about legal problems in their interview protocols, to create referral networks, and to use their auspices to reach their patients and customers. These are system-improving steps that we should have foreseen without the confirmation of a study, but which we will now pursue.

Intake

When we first started, we did not wait for the mapping-of-needs work to be completed. We looked for obvious areas to begin our work. Manifestly, with two dozen-plus-providers, coordination was one such area. We established a “sup-

mechanisms that should make it easier for people seeking legal help to be directed to the proper place. Another grant enables the D.C. Bar Pro Bono Program to develop “hotdocs” that will allow pro se litigants to answer a series of questions in landlord-tenant and family law cases and receive a pleading that incorporates those answers.

The intake work illustrates a key point. There is no such thing as a perfect and permanent fix to any problem. We realized recently that we have to go back to the intake issue and push harder. With our recently renewed mandate from the court, we have seven new members who are bringing fresh energy and ideas. (We now have six-year term limits for the members and have created a staggered system whereby about half the commission will turn over every three years.) Reviewing our activities, we realized that some of the work has not moved along

relief. Our sixties predecessors had great successes in many ways. But times have changed. The courts are less responsive. There is less “low hanging fruit” in any case. Lawsuits are resource intensive, and successful implementation of a litigated victory can involve more work that continues for years.

Meanwhile we have “discovered” that getting a law passed or an executive policy changed is sometimes easier than litigation or is perhaps even the only possible route for systemic change.

So we are working—and it is still a work in progress—to develop a local support center for the twenty-first century. It will most likely be part of one of our existing providers and feature both big-case litigation expertise and knowledge about the legislative process and the interstices of our local executive branch.

For the future, the support functions committee intends to study the legal services providers’ technology needs, especially when they are doing work away from their offices. Another agenda item is to develop a plan for locating legal services on-site at the courthouse, which we will present to the courts in the coming months.

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port functions” committee with members drawn from the broader legal community as well as from the commission itself.

We decided to concentrate first on intake. As a community we were pretty much at square one in terms of having a citywide system of intake with multiple points of entry and a user-friendly way of getting people to the help they need. We still have quite a long way to go, but we were able to establish a monthly meeting of intake workers that has in turn resulted in numerous new approaches to cooperation and more responsive services to clients, and we trained intake workers in the use of LawHelp.org/dc so they will have the most up-to-date information as to where to refer people in need of legal assistance. The Bar Foundation made a grant to three of our providers to develop a plan for a hotline and associated referral

with the momentum we would like. We have reconstituted our support functions committee and will redouble our efforts to improve the user-friendliness of the system. These are not simple tasks, but they are vital.

Impact Work

The other obvious challenge that the support functions committee assigned to itself was the issue of structural change—activities that, beyond the vitally necessary work of serving individual clients, would reduce poverty overall. The question of impact work has evolved greatly since the “good old days” of the sixties. The approach of the early legal services lawyers was to bring class actions against states and localities and private entities of one kind or another in order to get constitutionally based or big-ticket statutory

Language Access

Another pressing and immediate need has to do with language access. Our courts do a good job (although not perfect) of providing language interpretation in the courthouse. But providers told us of continuing frustration in serving clients in their offices. We undertook a broadly participatory planning process and included the idea of a shared interpreter bank in our request for city funding. Getting the system fully up and running is a continuing task, but our work in getting a responsive and effective framework in place paid off at an early stage in the life of the commission.

Pro Bono

Deserving of attention in and of itself is the question of how we build upon and expand the already impressive pro bono contribution that lawyers in our city make. The D.C. Bar Pro Bono Program sponsors effective intake and referral clinics, and literally dozens of firms have pro bono programs, most of which are

linked closely with one or more organizations that provide legal services on a full-time basis.

Yet it is plainly the case that we could and should be doing more and that we need to improve upon the overarching framework that nurtures and pushes for even greater pro bono participation. There are some underlying attitudes that many communities confront: full-time legal services lawyers who do not trust the commitment or capacity of volunteers, private practitioners who doubt the importance of investing in the cadre of full-time lawyers, and private lawyers who prefer glamorous class actions—such as the one arising from the refusal of a chain restaurant to serve African-American Secret Service agents guarding the president—and who claim they are unable to absorb the intricacies of family law or landlord-tenant disputes.

So a major challenge for our commission going forward is to make our pro bono structure more nimble and more responsive to community needs that arise. Where is the pro bono system to help people whose home ownership is threatened by foreclosure arising from subprime and predatory lending? Where is the structure to help ex-offenders surmount legal barriers to employment? Where is the representation for people embroiled in the byzantine working of our immigration system? Where is the organized way to involve retired lawyers and stay-at-home (predominantly female) mid-career lawyers in pro bono work? These are all needs that we can recognize, and the challenge is finding the leverage to make some things happen.

The Courts, Administrative Hearings, and the City Council

The Courts

With four judges sitting on our commission, we have excellent access to the chief judges of our local courts at both the trial and appellate levels. They are both deeply committed to improving access and responsive to suggestions. We have worked closely with the courts on a number of matters. One concerned making sure that the courts' new system of electronic filing does not adversely affect low-income

litigants. Another involved commenting, at the courts' request, on their 2008–2012 strategic plan. A third involved writing to the Joint Committee on Judicial Administration to urge the courts to seek funding to increase access to the courthouse for people who are disabled.

All of that said, there is still much to be done to improve the ability of pro se

as the holding of hearings only during the day when people are at work and are unable to take time off to testify. How, more broadly, to make the legislative process more accessible to ordinary citizens is less clear. The D.C. Consortium of Legal Services Providers has developed a helpful agenda that includes neighborhood hearings, greater public

Where is the pro bono system to help people threatened by foreclosure?

litigants to navigate the system, to offer up-to-date information to low-income litigants, and to be sure that language interpretation services are available as contemplated. Landlord-tenant court still offers major challenges, largely because so many tenants still lack counsel, but also because there are continuing issues (some budgetary, to be sure) in the way the court functions.

Office of Administrative Hearings (OAH)

All of the offices of administrative hearings in the various city agencies were consolidated into a single agency fairly recently. The consolidated entity has been working hard to become unified, and our commission has developed a partnership with OAH to help particularly with developing a pro bono system for representation and also advice and counseling. We have also helped in planning strategies to publicize OAH's work and procedures and also to reduce barriers to litigants' access to OAH. Other plans for what our commission might do are still in formation, but the process is constructive and promising.

City Council

The question of access to justice in relation to the work of the City Council is somewhat difficult to define. Some possible measures are easy to identify, such

notice of hearings, reduction in the use of emergency legislative powers so as to increase transparency, and a more public process of decision making. Our commission looks forward to working with the consortium to develop a collaborative agenda.

The Future

We have found, not surprisingly, that there is an unending agenda of matters to address in improving access to justice for civil litigants in the District of Columbia, to say nothing of the overarching agenda of working to end the poverty that is causing so many of the legal problems faced by low-income people, let alone causing their inability to afford counsel. We would note just one additional problem—the long-pressing need to find ways for people whose incomes are somewhat above the poverty line to obtain counsel. If there is a huge shortage of lawyers for people whose incomes are below or just above the poverty line, there is, if anything, an even greater dearth for people whose relatively low incomes are nonetheless too high to qualify for free legal counsel. This is a long-standing problem in our country, but one that must be confronted as the movement to improve access to justice gathers momentum around the nation. ■