

**DISTRICT OF COLUMBIA
ACCESS TO JUSTICE COMMISSION**

ANNUAL REPORT

February 28, 2005 – February 28, 2006

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I. Introduction

The words “Equal Justice Under Law” are inscribed on the United States Supreme Court building and on courthouses nationwide. Unfortunately, too many people with a civil legal problem do not receive equal justice because they do not have a lawyer. People charged with a crime that may result in jail time have a right to a lawyer if they cannot afford one. There is no similar guarantee for people who need civil legal assistance even though they may also face serious consequences.

A nationwide study by the Legal Services Corporation in 2005 concluded that approximately 80% of low-income individuals’ civil legal needs are not met. The situation is even worse in the District, where about 90% of low-income residents’ legal needs are unmet. These legal problems often affect basic human needs, such as shelter and family stability.

Take Sally’s case, for instance. She is a single mother who became homeless after she was wrongfully terminated from a public housing program. Because Sally did not want her daughter to be homeless, she sent her to live with relatives. The Housing Authority refused to restore Sally to the program, or to give her an eligibility hearing. She was put back in the program only after a legal services lawyer took her case to court. She obtained housing a week after the court hearing, and brought her daughter home. Without the lawyer’s assistance, it is likely she would still be homeless and apart from her child. Sally was fortunate. For thousands of other District residents, there is no help available.

The District of Columbia Court of Appeals created the District of Columbia Access to Justice Commission on December 29, 2004 to address the scarcity of civil legal services available to low and moderate income District residents. See Tab 1. The Commission is charged with assuring high quality access for these residents and others who face barriers in the civil justice system, and with raising awareness of the need for equal access to justice. More than twenty states have created similar bodies.

The Court of Appeals established three goals:

1. Increasing resources for access to justice efforts.
2. Improving planning and coordination of legal services delivery.
3. Reducing barriers to access to justice.

The Court appointed seventeen Commissioners on February 28, 2005, including four Court of Appeals and Superior Court judges, three past Presidents of the District of Columbia Bar, Executive Directors of three leading legal services providers, and other community leaders. The Commission is Chaired by Georgetown University Law Center Professor Peter Edelman. See List of Commissioners at Tab 2.

The Court of Appeals requires the Commission to file an annual report. This report summarizes the Commission's activities from February 28, 2005 to February 28, 2006.

II. Commission Structure

The Commission is an independent body that is privately funded. Akin Gump Strauss Hauer & Feld LLP and Steptoe & Johnson LLP led the fundraising efforts. Over fifteen of the District's leading law firms have provided financial support. See Donor List at Tab 3. The Commission also receives donated office space from Venable LLP, and extensive *pro bono* research from DLA Piper Rudnick Gray Cary. The Commission meets monthly and meetings are open to the public.

The District of Columbia Bar Foundation provided the Commission with fundraising and staff support last year. The Commission recently established the District of Columbia Access to Justice Foundation, a non-profit organization to employ our staff and to raise funds for operating expenses. The Commission's Chair will serve as the Foundation's Chair.

The Commission established committees for the areas of need described below. We also have a Priorities and Planning Committee to consider future initiatives.

III. Commission Initiatives

A. Landlord/Tenant Court

A 2003 D.C. Bar Foundation study concluded that the greatest legal need of the District's low-income population relates to housing. In Landlord/Tenant Court, for example, almost no tenants have lawyers. The Commission invited experienced Landlord/Tenant Court practitioners and Judge Neal Kravitz to speak about the Court and their recommendations for change. The Commission also toured Landlord/Tenant Court and met with several judicial employees. The lack of lawyers for low-income litigants was cited repeatedly as the primary barrier preventing equal access to justice.

The Commission responded to this need by first requesting that the District government provide funding for additional lawyers to work on housing-related matters, such as representing income-eligible litigants in Landlord/Tenant Court. Second, the Commission is reviewing models around the country that use *pro bono* and limited scope representation in housing cases to determine if any are appropriate in the District. Third, in response to a recommendation made by the D.C. Consortium of Legal Services Providers, the Commission is looking at whether disability laws require that counsel be provided to litigants in Landlord/Tenant Court with a serious mental disability. The Commission also met with several attorneys who have significant experience working with mentally disabled individuals to discuss the challenges in implementing such a program.

B. Language Access

The District has over 39,000 limited English proficient (LEP) residents, an increase of more than 30% between 1990 and 2000. The poverty rate for these residents is higher than the rate in the general population. The 2003 D.C. Bar Foundation study concluded that improving language assistance is another pressing need because legal services providers cannot communicate with their LEP clients. The Commission brought together government officials, legal services and social service providers, and directors of community interpreter banks for an all day roundtable to examine the feasibility of a shared legal interpreter and translator bank. Roundtable participants shared numerous stories about problems that arise when qualified interpreters are not available. For instance, a legal services provider told of children being used to interpret during a 911 call and during a home visit in a custody case. There was consensus that providers and District agencies need a centralized interpreter and translator bank. The Commission led planning efforts for the bank and sought funding. The Commission will also focus on other areas where language barriers prevent equal access to justice.

C. Public Funding for Civil Legal Services

Nearly 100,000 District residents live in poverty and tens of thousands more live just above the poverty level. Out of approximately 30,000 D.C. Bar members in the District, only about 100 lawyers work full-time on behalf of low-income residents and about twelve are in offices east of the Anacostia River. Although private lawyers provide extensive *pro bono* services, it is not nearly enough to meet the need. Therefore, one of the Commission's primary goals is to increase the number of legal services lawyers serving low-income residents.

Forty-three states provide funding for civil legal services through a direct appropriation and/or court fees and fines. Twenty-seven states provide a direct appropriation. Twenty-nine states provide funding through court fees/fines. A number of states, including Maryland and Virginia, use both approaches. The District provides very limited support, for emergency domestic violence related matters and for the elderly.

Commissioners had detailed discussions with numerous groups and community leaders to determine where public funding would have the greatest impact. These consultations formed the basis for the Commission's recommendation that the District government provide \$6.2 million annually for civil legal services beginning in fiscal year 2007. This funding, which would assist thousands of District residents, is divided into three components:

1. \$3.1 million to provide additional legal services lawyers to partner with social service and other community groups to work in underserved parts of the city.

2. \$2.6 million to hire more lawyers for housing-related matters, such as preventing eviction, preserving affordable housing, supporting tenant ownership, and representing tenants before administrative agencies.

3. \$500,000 to create the shared legal interpreter and translator bank that would be used by legal services providers and District agencies.

The Commission's funding recommendation was supported by the D.C. Courts, twenty-five past Presidents of the D.C. Bar, as well as an array of social service, legal services and faith-based organizations. The Washington Post also endorsed the request. See Tab 4.

D. Interest on Lawyers Trust Accounts (IOLTA)

Lawyers who receive nominal client escrow funds or funds that are expected to be held for a short time must (unless they opt-out) deposit this money in interest-bearing trust accounts. The interest generated by these accounts becomes the property of the D.C. Bar Foundation, which administers the IOLTA program. IOLTA revenues fund grants to local legal services providers, and support the operating expenses of the Bar Foundation. IOLTA generated an average annual return of \$652,000 over the last four years. The actual amount raised depends on the number of participating lawyers, the amount of funds lawyers put in their IOLTA accounts, and the interest rates paid by the banks on these accounts.

The Commission is working with the Bar Foundation to strengthen the IOLTA program by: (1) updating IOLTA rules to provide for revenue enhancement measures and more effective oversight and enforcement; (2) educating banks and lawyers about their IOLTA obligations; and (3) communicating with banks to secure more attractive interest rates for local lawyers' IOLTA accounts. The Bar Foundation has created the 'IOLTA Preferred Banks Program,' which provides recognition for banks that agree to pay fair interest rates on IOLTA accounts, with no fees. The Preferred Banks Program is designed to address concerns arising from the fact that IOLTA interest rates move down when market interest rates move down, but not commensurately up when market rates rise. The program is new, and negotiations with major IOLTA banks are ongoing. One bank has already agreed to participate.

E. Court Fees

Twenty-nine states fund civil legal services by adding a surcharge to *pro hac vice*, filing, or other court-related fees. The Commission is considering whether similar steps can be taken in the District.

F. Support Center for Legal Services Providers

Many states have support centers that enhance providers' delivery of services. These centers can train staff, conduct intake, coordinate service delivery, provide legal/legislative updates, and facilitate collective supply/technology purchases. The

Commission researched support center models across the country to help it determine how to structure a program in the District. In addition, a committee of Commissioners, local legal services providers, and national leaders in the legal services field was formed to prioritize among several possible support functions and recommend an implementation plan.

G. Legal Needs Assessment

The Commission is analyzing low and moderate income residents' legal needs and legal services providers' capacity to meet those needs. We reviewed legal needs studies done in the District and in other states to help determine our methodology. We will survey legal and social services providers, conduct focus groups of people living in poverty and in other demographic categories, and review court statistics. The results will help us determine future initiatives.

H. Pro Bono Work and Private Funding

The D.C. Bar is one of the nation's best in its commitment to *pro bono* work. In 2006, the Commission will work with the D.C. Bar and the Consortium of Legal Services Providers to increase the already generous levels of *pro bono* service and to examine how to do this work even more efficiently.

The Commission has already fostered collaborative *pro bono* efforts between the Court and bar members. For instance, we facilitated a meeting between judges, representatives of legal services groups, and a law firm *pro bono* coordinator to discuss ways that *pro bono* assistance can be provided to *pro se* litigants in meritorious cases.

In our first year, we focused on public funding for civil legal services. The Commission also recognizes the importance of increasing private resources. In 2006, we will evaluate other states' efforts to increase private funding of civil legal services to determine which initiatives to pursue.

IV. Outreach

Commissioners and staff met with numerous groups this year, including:

- ABA Project to Expand Resources for Legal Services
- Administrative Law Judges
- Anacostia Coordinating Council
- Center for Law and Social Policy
- Catholic University School of Law's clinical faculty
- Council for Court Excellence
- Courts, Lawyers, and Administration of Justice Section of the D.C. Bar
- D.C. Bar
- D.C. Bar Foundation
- D.C. Bar Pro Bono Program

- D.C. Consortium of Legal Services Providers
- Fair Budget Coalition
- Legal Services Corporation
- Pro Bono coordinators in law firms
- Pro Bono Institute
- Voluntary Bar Associations of the District of Columbia.

In 2006, the Commission's outreach efforts will continue reaching diverse segments of the District's population to identify barriers preventing equal access to justice. We will also collaborate with legal services providers and others to educate community members about the importance of legal services and residents' legal rights and responsibilities.

V. Work with Other State Commissions and Participation in National Access to Justice Efforts

Commissioners and staff have been active nationally in access to justice efforts. Two Commissioners attended the 2005 Annual Meeting of State Access to Justice Chairs. Over 100 leaders from the bar and the courts representing thirty-eight states met to learn about national trends and share insights. In addition, we are in frequent contact with other states' Access to Justice Commissions so that we can learn from successful efforts in other jurisdictions.

The Commission also benefited from the insights of California Court of Appeals Justice Earl Johnson, the former Co-Chair of the California Commission on Access to Justice. He met with the Commission to discuss the work, structure, and lessons learned from the California Commission, which was formed in 1997.

Last Fall, American Bar Association (ABA) President Michael Greco selected Commission Chair Peter Edelman to serve on an ABA Task Force on Access to Justice. This Task Force is:

1. Determining how to support and expand state Access to Justice Commissions;
2. Considering whether to recommend that a civil right to counsel be established for indigent persons in certain serious civil matters, such as those involving the integrity of family, housing or health; and
3. Developing principles for civil legal services delivery.

The Task Force will make recommendations to the ABA this year.

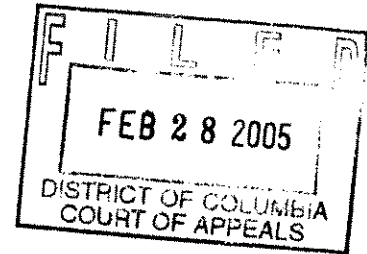
VI. Conclusion

The Commission has begun a range of initiatives to make the phrase "Equal Justice Under Law" a reality for all District residents. Transforming our civil justice

system will not happen overnight, nor will it be easy. As stated by then Chief Judge Annice Wagner when she announced the Commission's formation, "We need to broaden our efforts beyond the legal community. All branches of government, businesses, law schools, foundations, and every segment of our community must join in this effort if we are to solve this problem." The Commission has begun planting the seeds of success that, with the community's collective efforts, will lead to meaningful change so that low and moderate income District residents get the legal representation they need.

TAB 1

**District of Columbia
Court of Appeals**



M-220-04

BEFORE: Wagner, Chief Judge; Terry, Schwelb, Farrell, Ruiz, Reid, Glickman, and Washington, Associate Judges.

**AMENDED ORDER ESTABLISHING DISTRICT OF COLUMBIA ACCESS TO JUSTICE
COMMISSION***

WHEREAS, the judicial system of the District of Columbia is founded upon the fundamental principle that justice is accessible to all persons, the advancement of which is of fundamental interest to the District of Columbia Bar, the District of Columbia Bar Foundation, and the members of the D.C. Consortium of Legal Service Providers;

WHEREAS, this Court recognizes the importance of responding to the unmet legal needs of low and moderate income people in the District of Columbia and others who suffer disparate access barriers, the increasing complexity of civil legal services delivery, the importance of civil equal justice to the proper functioning of our democracy, and the need for leadership and effective coordination of civil equal justice efforts in the District of Columbia;

WHEREAS, the Conference of Chief Justices has adopted Resolution 23 which concludes that "the Judicial Branch, in our constitutional structure, shoulders primary responsibility to preserve and protect equal justice and take action to ensure access to the justice system for those who face impediments they are unable to surmount on their own" and which calls on members of the Conference "to establish partnerships in their respective states with state and local bar organizations, legal service providers, and others" to address access to justice issues; and

WHEREAS, the District of Columbia Bar, the District of Columbia Bar Foundation, and the D.C. Consortium of Legal Service Providers have jointly requested that the Court establish an Access to Justice Commission for the purposes stated below:

Now, therefore, it is hereby

* This order amends the Order Establishing District of Columbia Access to Justice Commission, filed on December 29, 2004, to increase the total number of members from fifteen to seventeen and to increase from three to five the at-large members to be selected on the basis of demonstrated commitment to, and familiarity with, access to justice issues.

ORDERED:

That a Commission known as the "District of Columbia Access to Justice Commission" is hereby established and is charged with responsibility of assuring high quality access for low and moderate income residents and others in the District of Columbia, who suffer disparate access barriers to the civil justice system, and with raising the profile in our community of the need for equal access to justice.

The Access to Justice Commission shall consist of seventeen persons appointed by this Court as follows:

Four (4) judges nominated by the Joint Committee on Judicial Administration in the District of Columbia;

Two (2) persons nominated by the District of Columbia Bar;

Two (2) persons nominated by the District of Columbia Bar Foundation; and

Four (4) persons nominated by the Consortium of Legal Service Providers, at least one of whom shall be a leader of a community-based organization serving persons living in poverty or a client of a D.C. legal services provider.

The remaining five (5) members shall be selected on the basis of a demonstrated commitment to, and familiarity with, access to justice issues.

The Bar, Bar Foundation, and Consortium shall submit to the Court a list containing at least one more candidate than the number of allotted slots.

The Court shall designate one member as the chairperson of the Commission who shall serve a term of two (2) years and who shall be eligible for reappointment.

The Court, the Bar, the Bar Foundation, and the Consortium commit to work together to achieve the jointly shared goal of improving access to justice in our community. While the Commission will be independent and its members will be expected to conduct their deliberations exercising independent judgment and with the perspective of what will best achieve access to justice, each stakeholder will endeavor to facilitate the work of the Commission.

The Commission will consult extensively with members of communities that experience barriers to justice, including persons living in poverty, language minorities, persons with disabilities, and others, to obtain their views regarding the barriers to equal justice and proposed solutions.

Any recommendations by the Commission shall be made in the name of the Commission only, and not in the name of the individual members or the institutions they represent.

The Commission will be established for an initial term of three years. The Court will extend the term of the Commission if the Commission has demonstrated significant progress toward the goals of a significant increase in funding for access to justice, improved planning and coordination in legal service delivery, and reduction in the barriers to access to justice.

The Access to Justice Commission shall work to:

1. Establish a coordinated planning process that involves all members of the community who are affected by the crisis in equal access to justice in an effort to develop strategies to improve access and reduce barriers;
2. Facilitate efforts to create improved coordination and support of civil legal services programs;
3. Work with the courts, administrative agencies and lawmaking bodies to propose and promote rules and systemic changes that will open greater access to the justice system; and
4. Propose and promote strategies to generate adequate levels of public, private, and volunteer resources and funding for the District's civil justice network and the access to justice initiatives identified by the Commission.

The Commission may adopt internal operational procedures pertinent to these responsibilities and may appoint advisory committees to assist in its work.

It is anticipated that support services will be provided for the Commission's work through private sources, such as the Bar Foundation or other charitable organizations.

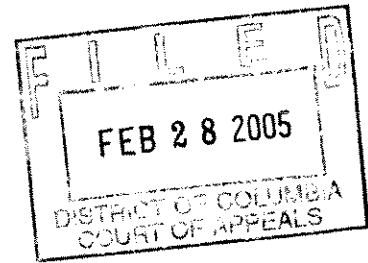
The Commission shall file with the D.C. Court of Appeals an annual report outlining its work during the prior 12 month period.

ENTERED BY DIRECTION OF THE COURT:


GARLAND PINKSTON, JR.
Clerk

TAB 2

**District of Columbia
Court of Appeals**



BEFORE: Wagner, Chief Judge; Terry, Schwelb, Farrell, Ruiz, Reid, Glickman, and Washington, Associate Judges.

ORDER

Pursuant to the Order Establishing District of Columbia Access to Justice Commission, filed December 29, 2004 (No. M-220-04), as amended by an order filed February 28, 2005, it is

ORDERED that the following persons are appointed as Members of the District of Columbia Access to Justice Commission, for three-year terms:

1. Professor Peter B. Edelman
2. Jayne Golden Belford, Esquire
3. Dr. Gloria Wilder Braithwaite
4. Marisa Demeo, Esquire
5. Judge Stephanie Duncan-Peters
6. Patricia Mullahy Fugere, Esquire
7. Andrew H. Marks, Esquire
8. Ms. Shirley Massey
9. Jayne Parks, Esquire
10. Stephen J. Pollak, Esquire
11. Judge Hiram Puig-Lugo
12. Judge Inez Smith Reid
13. Paula Scott, Esquire
14. Jonathan M. Smith, Esquire
15. Joan H. Strand, Esquire
16. Judge Eric T. Washington
17. Robert L. Wilkins, Esquire

It is FURTHER ORDERED that Professor Peter B. Edelman is appointed Chairperson of the Commission for a two-year term.

ENTERED BY DIRECTION OF THE COURT:

GARLAND PINKSTON, JR.
Clerk

**District of Columbia
Court of Appeals**

BEFORE: Washington, Chief Judge; Terry, Schwelb, Farrell, Wagner, Ruiz, Reid, Glickman,
and Kramer, Associate Judges.

ORDER

Pursuant to the Order Establishing District of Columbia Access to Justice Commission,
filed December 29, 2004 (No. M-220-04), as amended by an order filed February 28, 2005, it is

ORDERED that Associate Judge Vanessa Ruiz, of the District of Columbia Court of
Appeals, is appointed as a member of the District of Columbia Access to Justice Commission, to
replace and serve the remainder of the three-year term of Chief Judge Eric T. Washington.

ENTERED BY DIRECTION OF THE COURT:

GARLAND PINKSTON, JR.
Clerk of the Court

TAB 3

DISTRICT OF COLUMBIA ACCESS TO JUSTICE COMMISSION

District of Columbia Access to Justice Commission Donors

\$25,000 and above

Akin, Gump, Strauss, Hauer & Feld

Covington & Burling

Sidley Austin Brown & Wood

Steptoe & Johnson

Wilmer Cutler Pickering Hale & Dorr

\$15,000 - \$25,000

Boies Schiller & Flexner

Crowell & Moring

Foley & Lardner

\$10,000 - \$15,000

Hogan & Hartson

Jones Day

Williams & Connolly

DISTRICT OF COLUMBIA ACCESS TO JUSTICE COMMISSION

Under \$10,000

Arnold & Porter

Baker Botts

DLA Piper Rudnick Gray Cary¹

Skadden, Arps, Slate, Meagher & Flom

Venable²

¹ DLA Piper Rudnick Gray Cary is also the lead *pro bono* counsel to the Commission, and is donating a significant amount of attorney time to Commission-related projects.

² Venable is providing the Commission staff with fully furnished office space.

TAB 4

The Washington Post

AN INDEPENDENT NEWSPAPER

Legal Services for D.C.'s Poor

AS MAYOR Anthony A. Williams develops his fiscal 2007 budget, we hope he weighs carefully the request of the D.C. Access to Justice Commission for an annual appropriation to provide civil legal services to low-income District residents. By one estimate, more than 100,000 poor people in the District have unmet legal needs that include housing-related problems, family law and language assistance. Clearly, access to civil justice in the nation's capital should not turn on income or economic status. By providing official funding for civil legal assistance — similar to programs available in 43 states — Mr. Williams and the D.C. Council would be ensuring that residents who are unable to overcome impediments to justice on their own will get the help they need.

The commission is an organization of considerable legal heft. It was created by the D.C. Court of Appeals last year to tackle the glaring problems of unmet legal needs and barriers to legal access. The commission's membership is diverse: It consists of judges from the D.C. Superior Court and the Court

of Appeals, past presidents of the D.C. Bar, community leaders and other providers of legal services.

It is difficult to see how the mayor could ignore the commission's request for \$6.2 million annually. More than 30,000 lawyers work in the city, but only a dozen provide legal services in offices east of the Anacostia River. What's more, no full-time legal-services lawyers are working in Northeast Washington, according to the commission. What does that mean in practical terms? Reports the commission: "Of the 49,000 cases filed annually in landlord/tenant court, about 99% do not have lawyers even though tenants face eviction in virtually every case." Similar legal barriers exist for the more than 39,000 District residents who speak little English and who have trouble accessing government services and the legal system.

City leaders should find these conditions, and more like them, unacceptable. The D.C. Access to Justice Commission has provided a sound remedy — one we hope Mr. Williams will adopt in his fiscal 2007 budget.