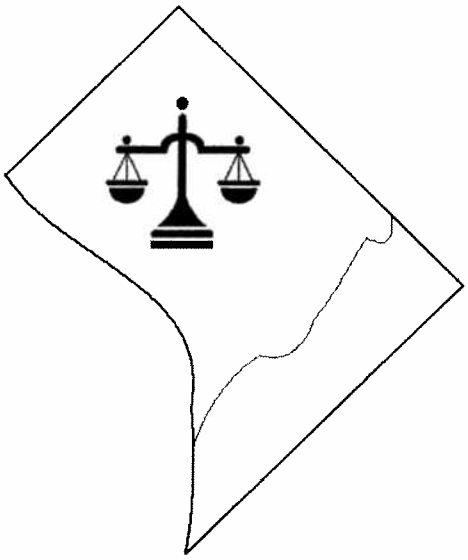
DISTRICT OF COLUMBIA
ACCESS TO JUSTICE COMMISSION



ANNUAL REPORT
March 1, 2006 – February 28, 2007

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I. Introduction

> *Equal justice under law is not merely a caption on the façade of the Supreme Court building, it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists... it is fundamental that justice should be the same, in substance and availability, without regard to economic status.*

These words were spoken over forty years ago by future Supreme Court Justice Lewis Powell, Jr. while serving as President of the American Bar Association. Since that time, despite the hard work and commitment of many in the legal community and elsewhere, it has continued to be difficult for unrepresented civil litigants to receive "equal justice under law." Legal services lawyers work tirelessly to serve low-income residents to achieve this fundamental end of our justice system. Their work is supplemented by the private bar's extensive *pro bono* work. Nonetheless, thousands of District residents still cannot get a lawyer in their time of need, and it is very hard for litigants to go through the judicial system by themselves. The D.C. Court of Appeals created the D.C. Access to Justice Commission in 2005 to take action in response to these problems.[1] Since then, the Commission has moved actively on a number of fronts to provide low and moderate income residents with a level playing field. For example, in the past year, we:

- Developed and generated support for a public funding proposal that led the City Council to appropriate $3.2 million for civil legal services in fiscal year 2007. This funding will provide many residents across the District with the legal representation they need.

- Worked closely with the Superior Court and legal services providers to bring additional lawyers to Landlord/Tenant Court, update the Court's referral lists, and discuss concerns about e-filing to ensure that the associated costs do not adversely affect low-income litigants.

- Took the lead in preparing a detailed set of recommendations designed to enhance the legal services network's intake and referral process.

- Collaborated with the D.C. Bar, D.C. Bar Foundation, the Consortium of Legal Services Providers, and others on a number of initiatives described below that will assist District residents who face barriers in our civil justice system.

We are pleased to present the Court with this annual report, which details our efforts to make Justice Powell's words a reality in the District of Columbia.

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[1] Attachment One lists the Commissioners and staff.

II. Commission Initiatives

A. Public Funding for Civil Legal Services

The Commission brought about a significant increase in public funding for civil legal services. Prior to the Commission's formation, the District government provided only limited funding in a few areas. Funding for civil legal services was provided mainly by law firms, individual donors, and the federal government. As detailed in last year's annual report, the Commission submitted a proposal for District government funding in three areas:

(1) Underserved Neighborhoods and Groups - To locate lawyers in neighborhoods that currently have little or no legal services, provide legal aid to underserved groups, and foster innovative collaborations with social service providers;

(2) Housing-related Legal Services - To provide a range of legal services to help low-income tenants remain in their homes and preserve affordable housing; and

(3) Legal Interpreter Bank - To train interpreters and centralize the process for requesting interpreter services, which would give limited English proficient residents access to the legal system and other institutions of government.

We met with numerous government officials to discuss our proposal, and testified twice before the City Council in the spring of 2006. Our proposal received widespread support from members of the private bar, numerous community organizations, and others throughout the District. A Washington Post editorial also endorsed the Commission's funding request. Several prominent community members testified in favor of the Commission's proposal, and Commission Chair Peter Edelman was accompanied by Chief Judge Eric Washington and Chief Judge Rufus King when they all testified before the Committee of the Whole. The Commission is deeply grateful for their support of our work.

The City Council appropriated $3.2 million in fiscal year 2007 to fund the activities listed above. This funding will allow legal services organizations to hire about thirty new lawyers and increase their capacity to leverage the *pro bono* services of the private bar. Countless more District residents will get the legal representation they need. Up to $250,000 of the $3.2 million will fund the District of Columbia Poverty Lawyer Loan Assistance Repayment Act of 2006, which will pay up to $1,000 per month to lawyers who live in the District and work for legal services organizations. Loan repayment assistance is necessary because many law students graduate with a high debt load, and struggle to make ends meet if they work for a legal services organization. The loan repayment program will be of tremendous assistance in recruiting and retaining legal

services lawyers. The Commission strongly supported this legislation and testified before the City Council in favor of it last spring.

As requested by the Commission, the public funding was included in the Office of the Attorney General's (OAG) fiscal year 2007 appropriation. The OAG entered into a memorandum of understanding with the D.C. Bar Foundation, which created a new grant program to distribute the funds to legal services providers. In anticipation of these funds becoming available, Commissioners worked with the Bar Foundation to put together six listening sessions with various segments of the community. Attendees made suggestions on priorities and details for the disbursement of the funds. Participants included line attorneys and Executive Directors of legal services providers, law school clinical directors, law firm *pro bono* counsel, and other community members. These sessions were extremely helpful, and are summarized at http://www.dcbarfoundation.org/2006ListeningSessionsSummary.htm.

The Commission is working closely with the Consortium of Legal Services Providers and the Bar Foundation to ensure that the legal services providers have the support they need to recruit and train the new lawyers who will be hired with the public funds. For example, collaboration among the three groups led to a decision to post all new attorney positions on a centralized website so that it will be easier for prospective applicants to see all available positions.

In June 2006, the D.C. Bar established a study committee to recommend whether the Bar's Board of Governors should seek authority from the Bar's membership to speak in support of the Commission's public funding proposals. The Commission's Chair and staff met with the committee in December 2006 to answer questions about the Commission's work with the City Council and discuss the importance of the Bar's role in supporting the Commission's funding request. After additional meetings with the Bar Foundation and the Consortium of Legal Services Providers, the Committee concluded that the Board of Governors should seek authority from the membership to speak in support of the Commission's public funding proposals. The Board of Governors accepted the Committee's recommendation and received this approval at a special membership meeting during the 2007 D.C. Bar Conference.

The Commission welcomes the Bar's support of our efforts to sustain the public funding in fiscal year 2008 and beyond. The Commission has requested $3.4 million in public funding for civil legal services in FY 2008 to continue services in the same areas as in FY 2007. The $200,000 increase will help keep pace with inflation and allow for modest program enhancement for the legal interpreter bank. The City Council will complete its FY 2008 budget in June 2007.

B. D.C. Superior Court

We have collaborated with the D.C. Superior Court on a number of issues to make it easier for *pro se* litigants to get representation and to navigate the judicial system. First, the Commission, D.C. Bar Pro Bono Program, and several other legal services

providers worked closely with the Court to establish a program where legal services lawyers can provide services while stationed in Landlord/Tenant Court. The Commission began by reviewing national models in which legal aid organizations and/or *pro bono* attorneys provide on-site services. Several legal services providers and the Court then developed a pilot program that has recently been instituted in Superior Court Building B. Under this program, legal services organizations are stationed in Landlord/Tenant Court three days a week. These lawyers are available to represent litigants who request services on the same day they are scheduled to appear in Court. To facilitate this process, the Court issued Administrative Order 07-02, which permits attorneys to make temporary appearances. The appearance is automatically withdrawn at the conclusion of the proceeding. It is anticipated that the vast majority of litigants served by the pilot project will get representation even after the temporary appearance ends.

Second, after meeting with Court staff from the Civil and Family Divisions, the Commission updated the legal referral lists that both Divisions distribute to *pro se* litigants seeking legal assistance. Commission members also met with the Court to ensure that the newly installed court kiosks give users access to www.lawhelp.org/DC. This website is a comprehensive legal referral resource for the public. It also contains legal information written for a lay audience in a variety of substantive areas.

Third, in the spring of 2006, Judge Brook Hedge briefed the Commission about the Court's plans to require lawyers to file pleadings electronically rather than on paper. Pursuant to Administrative Order 06-17, e-filing expanded to a larger category of Civil II cases on February 5, 2007. After the Order was issued, a number of legal services providers expressed concern about the third-party fees associated with e-filing documents in Superior Court. These providers represent poor litigants almost exclusively. The Administrative Order did not indicate whether poor litigants were exempt from these additional third-party fees. The Commission raised this issue with the Court and received clarification that the third-party fee was not meant to apply to indigent litigants. The Court has been permitting litigants who qualify for *in forma pauperis* (IFP) status to continue to file on paper (just as before) until it can resolve the technological issues related to exempting these litigants from the e-filing fees. A concern was also raised about the legal services organizations having to pay the e-filing fees for those litigants who, while technically not IFP, are still too poor to absorb these extra fees. The Commission and the Court have been discussing ways to address this issue.

C. Office of Administrative Hearings (OAH)

In the summer of 2006, the Commission learned that the OAH was planning to centralize its offices in Southwest D.C. OAH is the agency responsible for reviewing the administrative decisions of fourteen District of Columbia agencies. It hears about 20,000 cases a year, many involving low-income litigants. The Commission reviewed the situation and concluded that the chosen location would be difficult for people to reach via public transportation. The location would therefore pose an undue burden on those litigants who must rely on public transportation to get to a Court hearing. The Commission discussed the situation with the Mayor's office and members of the City

Council. The District government subsequently decided to find a different location for the office. OAH has since established a Location Committee, which includes one Commissioner.

OAH has been assisting the Commission with our legal needs assessment (see Section H, *infra*) by gathering information about the number and percentage of *pro se* litigants in particular types of cases. In addition, the Commission Chair and staff met with Chief Judge Butler and his staff in January 2007 to discuss our work, as well as ways we can collaborate to increase representation for *pro se* litigants and reduce other access to justice barriers. Chief Judge Butler and his staff will meet with the full Commission in April 2007.

D. Coordinating Legal Services Delivery

Last year, the Commission established a committee to make recommendations about how the legal services network could improve intake and referrals. The committee included representatives from the Commission, legal services providers, and law firm *pro bono* coordinators. The committee began by identifying the barriers to getting civil legal services in the current system. It reviewed memoranda describing intake and referral models in other states, toured a local legal services hotline, met with intake staff from several legal services providers, and spoke with Court employees who have significant contact with *pro se* litigants. The committee developed a set of recommendations, which the full Commission has approved. These recommendations will improve coordination and support of civil legal services programs. See Amended Order Establishing District of Columbia Access to Justice Commission, 2/28/05, at 3. The recommendations are:

1. Enhance communication among legal services providers' intake staff so they have a better understanding of other organizations' case priorities and programs;

2. Increase the use and functionality of www.lawhelp.org/DC so that it will be relied upon more frequently by intake staff and others who decide where to refer residents in need of legal assistance;

3. Ensure that legal services providers have the necessary technological support they need to function effectively, particularly when they are doing work off-site;

4. Work with the Court to create a program that provides legal services in the Moultrie Courthouse; and

5. Create a coordinated referral network so that providers can send people seeking legal assistance to the appropriate legal services organization.

This year, the committee will begin implementing these recommendations. The committee also will begin planning to create "support center" functions in the District.

Many states have established independent centers or programs within existing organizations that assist with the planning, support, and enhancement of legal services delivery. These centers carry out a wide range of functions, such as giving administrative support to legal services organizations, conducting administrative or legislative advocacy, and providing training. The Commission has sought the input of the Consortium of Legal Services Providers and others to determine which of the many possible functions should receive priority in the District.

E. 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 pooled, interest-bearing trust accounts, known as IOLTA accounts. The interest generated by these accounts is sent to the Bar Foundation, which administers the District's IOLTA program. IOLTA revenues fund grants to local legal services providers and support the Bar Foundation's operating expenses. The amount raised by IOLTA accounts depends on the number of participating lawyers, the amount lawyers put in their IOLTA accounts, and the interest rates paid by the banks on these accounts. From 2002 – 2005, IOLTA generated an average annual return of $652,000.

The Commission has supported the Bar Foundation's work in (1) communicating with participating banks to secure more favorable interest rates for IOLTA accounts; and (2) preparing updates to the District's IOLTA rules that should increase IOLTA funds, and provide more effective enforcement and oversight. There was tangible progress on both initiatives last year.

First, as a result of the Bar Foundation's efforts to secure more attractive interest rates through the *DC IOLTA Preferred Bank Initiative*, seven area banks have increased their IOLTA interest rates. Four of these banks – Adams Bank, Citibank, First Horizon, and PNC Bank – have increased rates to roughly 75% of the current federal funds rate of 5.25%. The Bar Foundation recognizes these four banks as *DC IOLTA Preferred Banks* and promotes them as depositories for lawyers and law firm accounts. Increased interest rates generated a 50% increase in IOLTA revenues through June 30, 2006. IOLTA revenues are projected to rise by another 70% through June 30, 2007. These increases translate to additional funding to support legal services providers.

Second, the Bar Foundation has convened an IOLTA Rules Review Subcommittee, which includes three D.C. Bar appointees, the Bar Counsel, and members of the Bar Foundation Board. The Subcommittee, with input from national IOLTA experts, has prepared draft changes aimed at updating and strengthening the rules governing the District's IOLTA program. The Subcommittee is well under way toward proposing changes.

F. Other Funding Efforts

The Commission established a Private Revenue Committee, which has been considering ways to measure the private sector's financial contributions to legal services organizations. The goal of this effort is to determine if benchmarks for private giving can be established. The Committee also examined a number of other possible revenue sources for civil legal services. It concluded that seeking a rule that would govern the distribution of *Cy pres* awards is worthy of further study. Our work in this area is on-going.

G. *Pro Bono*

The Commission has consistently looked for opportunities to increase the *pro bono* participation of the private bar. For instance, we are working closely with the D.C. Bar to develop a new *pro bono* campaign that will focus on the 51st – 100th largest law firms in the City. The campaign will kick off later this year.

We also took action in response to the Office of the Attorney General's (OAG) request that *pro bono* counsel be provided to family members or guardians who seek civil commitment of a loved one who, unless treated, is likely to injure himself or others. These cases do not arise frequently. However, when they do, the family member is often *pro se*, but the respondent is represented by counsel pursuant to statute. The Commission sought the assistance of the D.C. Bar Pro Bono Program, and together identified law firms to take these cases. The OAG has agreed to provide training to the *pro bono* lawyers.

H. Legal Needs Assessment

The Commission is conducting the most comprehensive legal needs study ever done in the District of Columbia. Besides identifying the legal needs of low-income residents and others who face barriers in our justice system, the study will summarize the current capacity of legal services providers to meet these needs. The study will rely on a number of sources, including past legal needs studies in the District, an extensive survey sent to each legal services provider, and interviews of nearly three dozen community-based organizations. The Commission also asked every legal services provider to document the legal needs and demographic characteristics of every person who sought legal assistance from that provider over a one-month period in 2006.

In addition, we are collecting statistics from the Superior Court, Court of Appeals, and Office of Administrative Hearings detailing the number and percentage of *pro se* litigants in various types of cases. We are fortunate to have extensive *pro bono* assistance from DLA Piper US LLP in developing the survey materials, analyzing the results, and preparing the report. We expect to issue the report in the summer of 2007.

I. Outreach

We have continued to reach out to the legal community and beyond to inform people about the importance of civil legal services and to hear the voices of those who are directly affected by barriers in the civil justice system. Commissioners and staff spoke at a number of events last year, including the March 2006 Judicial and Bar Conference, a symposium sponsored by the University of the District of Columbia (UDC) David A. Clarke School of Law on strategies to end poverty, and the D.C. Bar Pro Bono Program's PART Luncheon, which included representatives from dozens of law firms and government agencies. We also made presentations to the Washington Lawyers' Committee for Civil Rights and Urban Affairs, the Board of the Public Defender's Service, and law firms in the District. In addition, the D.C. Bar magazine, The Washington Lawyer, provides periodic updates about our initiatives. The magazine will run an in-depth feature on the Commission in the April 2007 issue. Our work has also been profiled in the Legal Times.

Our community outreach included an appearance on the *Sound Advice* cable television program hosted by Dean Shelley Broderick of the UDC David A. Clarke School of Law. The show reaches 175,000 viewers in the District and is repeated regularly. The Kojo Nnamdi Show on WAMU did a feature on the Commission that generated phone calls and e-mails seeking more information about civil legal services and our work. Commissioners also met with the Mayor's Interfaith Advisory Council, and conducted listening sessions with several groups throughout the District. These groups include a tenant's association and injured government workers who are seeking to reform the District's workers' compensation system. We recently launched our website, www.dcaccesstojustice.org, so that the public can get more information about our activities.

III. Participation in National Access to Justice Efforts and Consultation with Other State Commissions

Commission Chair Peter Edelman was appointed to a blue-ribbon American Bar Association (ABA) Task Force on Access to Justice by then ABA President Michael Greco in the summer of 2005. After extensive study, the Task Force prepared a report and resolution concerning the right to counsel in certain civil cases. The resolution was approved unanimously by the ABA House of Delegates in August 2006. It reads, "Resolved, That the American Bar Association urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low-income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody."

The Task Force also was charged with finding ways to support and expand the network of state Access to Justice Commissions. While only a handful of Commissions existed a decade ago, today more than half the states have an Access to Justice Commission or equivalent body.

We continue to be in contact with Commissions in other states so that we can learn from our colleagues and share our experiences with them. We have been regular participants in national meetings of access to justice leaders. Other Commissions have also sought our advice on a number of issues.

IV. Commission Structure

There was no change in the Commission's membership last year. The D.C. Court of Appeals extended the term of Commission Chair Peter Edelman until February 28, 2008 and named Robert Wilkins as the Vice-Chair.

Last year, the Commission met approximately once a month and all meetings were open to the public. We have several committees that carried out much of the work described in this report. These committees have an array of participants, including Commissioners, legal services providers, *pro bono* coordinators, and other community members.

The District of Columbia Access to Justice Foundation was created last year to raise funds to support the Commission's work and employ its staff. Peter Edelman serves as President of the Foundation. The Foundation's other board members are Andy Marks, R. Bruce McLean, Jayne Park, Paula Scott, Emily Spitzer, Roger Warin, Robert Weiner, and Robert Wilkins. The Foundation received recognition from the Internal Revenue Service as a tax-exempt organization in September 2006, and began employing the Commission's staff on January 1, 2007. The Foundation receives no public money and could not carry out its work without the financial support of a number of the District's leading law firms. Our donors are listed in Attachment Two. In addition, we would like to thank Venable LLP for providing office space to Commission staff, Steptoe & Johnson LLP for serving as the Foundation's general counsel, and DLA Piper US LLP for the firm's extensive *pro bono* assistance on a number of Commission initiatives.

V. Conclusion

The Commission has begun addressing many of the problems that low-income residents and others face when dealing with the civil legal system. The issues we are confronting are deeply rooted and often complex, and therefore cannot be solved by quick or simplistic solutions. We will continue our collaborative efforts with public and private entities throughout the District to solidify the gains we have made and to take further steps to reach the standard set forth by Justice Powell, so that equal justice is available to all.

ATTACHMENT 1

D.C. Access to Justice Commissioners

1. Professor Peter B. Edelman, Chair

2. Robert L. Wilkins, Vice Chair

3. Jane Golden Belford, Esq.

4. Dr. Gloria Wilder Braithwaite

5. Marisa Demeo, Esq.

6. Hon. Stephanie Duncan-Peters

7. Patricia Mullahy Fugere, Esq.

8. Andrew H. Marks, Esq.

9. Shirley Massey

10. Jayne Park, Esq.

11. Stephen J. Pollak, Esq.

12. Hon. Hiram Puig-Lugo

13. Hon. Inez Smith Reid

14. Hon. Vanessa Ruiz

15. Paula Scott, Esq.

16. Jonathan M. Smith, Esq.

17. Joan H. Strand, Esq.

Staff

Sunil H. Mansukhani, Executive Director

Debra R. Topor, Administrative Associate

ATTACHMENT 2

DISTRICT OF COLUMBIA ACCESS TO JUSTICE FOUNDATION

District of Columbia Access to Justice Foundation Donors

$35,000 and above

Covington & Burling LLP

Steptoe & Johnson LLP

Wilmer Cutler Pickering Hale and Dorr LLP

$25,000 - $35,000

Akin Gump Strauss Hauer & Feld LLP

Crowell & Moring LLP

Sidley Austin LLP

$15,000 - $25,000

Boies, Schiller & Flexner LLP

Foley & Lardner LLP

Williams & Connolly LLP

EXECUTIVE DIRECTOR
SUNIL H. MANSUKHANI

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$10,000 - $15,000

Arent Fox PLLC

Arnold & Porter LLP

Hogan & Hartson

Jones Day

Venable LLP[1]

Under $10,000

Baker Botts LLP

Cohen, Milstein, Hausfeld & Toll PLLC

DLA Piper US LLP[2]

Gibson, Dunn and Crutcher LLP

Holland & Knight LLP

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[1] Venable LLP is providing the Commission staff with fully furnished office space.

[2] DLA Piper US LLP is also the lead *pro bono* counsel to the Commission, and is donating a significant amount of attorney time to Commission-related projects.