

Maryland Access to Justice Commission



Interim Report & Recommendations

FALL 2009

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- Definitions & Standards
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Executive Summary

A healthy civil justice system is a critical component of a just and civil society. It is the mechanism through which individuals assert claims and enforce the law, through which grievances are redressed and ordinary citizens empowered. The rule of law operates most effectively if individuals have full and fair access to that system.

The Maryland Access to Justice Commission was created by Chief Judge Robert M. Bell in 2008 to develop, coordinate and implement policy initiatives to expand access to the State's civil justice system. The Commission brings together leaders and stakeholders from the Maryland Judiciary and its justice system partners, including members of the legal services delivery system, the Maryland State Bar Association, the Executive and Legislative Branches, and the Governor's Office. The Commission seeks to create a meaningful voice for the public whose interest it serves.

This Interim Report reflects the work of the Commission and its committees during its first year. The Commission has undertaken a year long public inquiry process to garner meaningful input from all Marylanders. The Commission is hosting a series of ten regional Listening Events around the State. The Commission invited stakeholders, their clients and members of the public to attend and speak to the Commission about their experience in using the courts, trying to find legal help or solve a legal problem. The Commission plans to produce a more comprehensive report and set of recommendations at the conclusion of the information gathering process.

In this report the Commission highlights a number of steps which should be taken to provide meaningful access to justice for Marylanders. From the 62 recommendations included in the report, a number of themes emerge.

1. Ensure stable and sufficient funding to support the civil legal services delivery system through which low-income Marylanders receive legal help. Before the newly appointed Commission held its first meeting, in October, 2008, the nation was plunged into its most significant financial crisis since the Great Depression. In this, its first year, the Commission

has been dominated by concerns about the impact of that crisis upon the civil legal services delivery system in Maryland. That system, a network of 35 non-profit entities which provide legal assistance and representation to low-income Marylanders, was already underfunded before the crisis began. Since the onset of that crisis, the State's legal services organizations have reported a significant increase in demand, at a time when program funding has been reduced by 20 percent or more. More cuts are likely in the next fiscal year for these programs, as interest rates are projected to remain low for some time to come. About one-half of the funding the State for civil legal services has historically come from the Interest on Lawyer's Trust Accounts (IOLTA) program which directs interest income to the Maryland Legal Services Corporation, which in turn makes grants to legal services providers. The IOLTA program is expected to generate \$5 million less in the current fiscal year (Fiscal Year 2010) than it did two years prior (in Fiscal year 2008). Before we can provide civil justice to all Marylanders, we need to ensure that individuals can obtain legal representation when they need it. In this report, the Maryland Access to Justice Commission makes several recommendations to address the current crisis in funding for civil legal services. Through these recommendations, the Commission looks forward to the day when Maryland provides adequate funding to ensure the delivery system fully meets the needs of the indigent.

2. Create innovative legal practices, court processes and services to enhance the ability of all persons, including the self-represented, to use the courts or solve a legal problem. Marylanders appear in court on their own, without a lawyer, in record numbers. The Commission recommends initiatives that will enhance the ability of the self-represented, those who go without counsel, to navigate the court system.

3. Operate courts and services in a manner designed to address the special needs of vulnerable populations, ensuring facilities and services are safe, convenient and accessible. Individuals encounter a range of barriers when trying to use the courts, obtain legal help or solve a legal problem. Some of the barriers identified by individuals testifying before the Commission include language, literacy, ability, cultural differences, and a lack of

access to counsel. Addressing these barriers, in this Interim Report the Commission examines several law reform issues designed to enhance access to civil justice.

Through the work of the Commission, Maryland has an opportunity to provide all Marylanders with a vibrant and accessible civil justice system. The Commission offers this report and these recommendations in the hope that progress will continue to be made so all persons in our State have equal access to justice.

Recommendations

This report includes recommendations in five key areas: 1) Access & Delivery of Legal Services; 2) Critical Barriers; 3) Public Education; 4) Safety, Accessibility & Convenience; and 5) Self-Represented Litigants.

Access & Delivery of Legal Services (Recommendations 1 – 6)

RECOMMENDATION 1

The Maryland Access to Justice Commission supports the principle that low-income Marylanders should have a right to counsel at public expense in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody.

RECOMMENDATION 2

The Maryland Judicial Institute should develop and offer a regular course for Maryland judges on the “The Judicial Role in Maryland Fee-Shifting Statutes.” A complete course proposal, including a statement of need, is included as Appendix A.

RECOMMENDATION 3

The Maryland Access to Justice Commission endorses the principle of a general fee-shifting provision as a means to promote access to justice through an award of attorney’s fees for individuals successfully enforcing their rights under Maryland law or the Maryland Constitution.

RECOMMENDATION 4

Increase the filing fee surcharge for all civil case types by a reasonable amount and dedicate the resulting revenue to civil legal services.

RECOMMENDATION 5

When economic circumstances make this option more feasible, the Maryland General Assembly should consider providing a regular appropriation from the State’s General Funds to support civil legal services.

RECOMMENDATION 6

Increase the attorney registration fee collected by the Client Protection Fund and dedicate the resulting revenue to civil legal services.

Critical Barriers (Recommendations 7 – 41)**RECOMMENDATION 7**

The Judiciary, legal services providers and the People's Law Library should ensure documents and web-based materials are posted in a format compatible with screen-reading software for the blind.

RECOMMENDATION 8

The Judiciary, legal services providers and the People's Law Library should work with organizations serving persons with disabilities to obtain technical assistance to ensure technologies are accessible.

RECOMMENDATION 9

Make renovations to render courthouses or facilities where court services and legal services are provided more accessible to persons with disabilities.

RECOMMENDATION 10

Provide online maps of accessible entrances and accessible parking for court, commissioner and service provider facilities.

RECOMMENDATION 11

Provide training for judges, clerks and court staff on the needs and expectations of persons with physical and mental disabilities.

RECOMMENDATION 12

Provide training to judges, masters and attorneys on the recently enacted 2009 Md. Laws 568 by including this in the Family Law Curriculum of the Judicial Institute and by offering trainings through MICPEL to Maryland lawyers. The new law precludes courts from considering the disability of a parent in making child welfare and child custody determinations unless the disability affects the parent's ability to give the child proper care and attention.

RECOMMENDATION 13

Provide additional outreach to seniors living in nursing homes or assisted living facilities about legal information and legal services. Large print handouts and wall posters would be valuable. Legal services providers should consider providing relevant services on-site. Offer training on legal resources to the nursing home and assisted living advocates who are required to be on-site in each facility. This may be offered through the state advocates at the Maryland Dept. of Aging.

RECOMMENDATION 14

Increase the use of alternative dispute resolution training in adult guardianship cases, issues involving family caregivers, and other matters affecting seniors.

RECOMMENDATION 15

Use donated computers to create legal information and outreach sites in nursing homes, assisted living facilities and senior centers, and train seniors in their use.

RECOMMENDATION 16

Provide additional funding for Court Appointed Special Advocates (CASAs) for children in foster care.

RECOMMENDATION 17

Increase the use of alternative dispute resolution in CINA and TPR cases.

RECOMMENDATION 18

Create a program model to provide school-based advocacy for youth with educational issues and needs.

RECOMMENDATION 19

Provide one judge/one family in family and juvenile cases.

RECOMMENDATION 20

Provide information about public transportation routes to courts, commissioner locations and service providers online, at clerk's offices, commissioner offices and in police stations, and support efforts to create additional resources to ensure adequate public transportation and parking is available for all court and service locations.

RECOMMENDATION 21

Consider providing after-hours commissioners in more locations and in more convenient, less intimidating spaces to make it easier for victims to seek interim protective orders or to transact other court business.

RECOMMENDATION 22

Consider permitting victims to appear for the temporary protective order hearing in a location reasonably close to where they obtained an interim order.

RECOMMENDATION 23

Avoid sending victims to areas of the jurisdiction which may be difficult to reach by public transportation.

RECOMMENDATION 24

Judges should provide flexibility to victims seeking protection who may not appear precisely on time.

RECOMMENDATION 25

Support and expand efforts by service providers or bilingual government advocates to offer outreach and educational information to the Limited English Proficiency (LEP) population.

RECOMMENDATION 26

There should be lower-cost ways for the incarcerated to communicate with their counsel.

RECOMMENDATION 27

The State should provide increased funding for civil legal services for low and moderate income Marylanders.

RECOMMENDATION 28

Courts should consider scheduling matters requiring Spanish court interpreters on certain dates to permit efficiency of court time, interpreter time, and service to the LEP population.

RECOMMENDATION 29

Rotate interpreters to ensure interpreters remain engaged in the process of interpreting for the court.

RECOMMENDATION 30

Interpreters should be contacted at least five days prior to assignment to ensure their availability.

RECOMMENDATION 31

Raise the current court interpreter fees to stay competitive.

RECOMMENDATION 32

Hire a full-time Spanish translator who will be part of the Court Interpreter Program team to work on translating forms, websites and any written materials for the courts on a regular basis.

RECOMMENDATION 33

For languages other than Spanish, the Administrative Office of the Courts should consider contracting a translation company that will provide translations of essential court documents, glossaries and websites on a regular basis.

RECOMMENDATION 34

The Court Interpreter Program can offer assistance in developing a protocol for translation projects and identifying vendors to provide on-going translation of court materials and glossaries in languages other than Spanish.

RECOMMENDATION 35

Review all forms, written instructions and web-based materials to ensure they are simple, comprehensible and not written in legalese.

RECOMMENDATION 36

Promote the provision of sliding fee civil legal aid services to persons above the Maryland Legal Services Corporation (MLSC) guidelines.

RECOMMENDATION 37

Continue to promote the development and provision of “unbundled” legal services to the low- and moderate income population.

RECOMMENDATION 38

Have Maryland legal services programs collect and report data to MLSC on persons declined service or provided less than needed service because of inadequate resources, or because their need is not

included in the program's priorities, or for reasons other than income eligibility. Have the programs guide unserved or underserved persons on how to register their grievances about the lack of availability of legal services with MLSC or some other organization.

RECOMMENDATION 39

Organizations like those serving victims of crime or abuse, the local domestic violence coordinating councils, and statewide networks can play a role in enhancing public awareness or in providing actual legal services.

RECOMMENDATION 40

Increase public education, information and outreach to inform the public, and especially hard-to-reach groups such as older persons, infirm aged, institutionalized aged, disabled persons, the homeless, and non-English speaking populations.

RECOMMENDATION 41

Increase education and outreach efforts by government and private service providers, networks, and coordinating councils.

Public Education (Recommendation 42)

RECOMMENDATION 42

The Judiciary and its justice system partners should collaborate with the Commission to plan and implement a Maryland Access to Justice Day at the Maryland General Assembly during a future Legislative Session.

Safety, Accessibility & Convenience (Recommendations 43 - 58)

RECOMMENDATION 43

Courts should develop, in coordination with relevant stakeholders, security protocols to assist at-risk individuals while on court premises. Train staff in the protocol.

RECOMMENDATION 44

Court facilities should have adequate lighting in parking lots.

RECOMMENDATION 45

Post or provide information based on the permanent layout of the building at all court locations to guide court users in finding their way. These should be provided in the building only, not on websites or in published materials, for security purposes. These might include:

- a. Signs
- b. Maps (provided on location only, not online or in publications)
- c. Arrows
- d. Icon-based signage and location cues (ADA compliant)
- e. Information desks and greeters – consider trained volunteers

RECOMMENDATION 46

Provide information online including:

- a. Maps of accessible entrances
- b. Maps of accessible parking
- c. Exterior building photos – with equivalent language (tag) for the visually Impaired.

RECOMMENDATION 47

The Judiciary should consult with technical consultants who can ensure the accessibility of web materials.

- a. Redesign websites to comply with Dept. of Justice ADA Best Practices Toolkit for state and local governments.

RECOMMENDATION 48

Provide training for court personnel on the following topics:

- a. Customer service
- b. Legal advice vs. info
- c. Judiciary structure, division of authority, and basic information
- d. ADA requirements and concerns including disability awareness
- e. Frequently asked questions

RECOMMENDATION 49

Provide accessible parking closer to court facilities.

RECOMMENDATION 50

Conduct an accessibility audit of all the court locations and commissioner stations (A similar audit was conducted about 3 years ago).

- a. Fund and implement improvements.
- b. Provide for citizen review and participation, especially eliciting insights from persons with disabilities.

RECOMMENDATION 51

Provide information to court users on the distinctions between the District and Circuit Court.

RECOMMENDATION 52

Have the Office of Communications and Public Affairs incorporate accessible parking maps, Google directions links, and transit directions into the court location information provided online. Also distribute the materials to local courts for posting on local court websites.

RECOMMENDATION 53

Study the further use of court-based business centers with public computers, fax, and phone to aid all court users.

RECOMMENDATION 54

Prepare web-based information on "What to Expect." A notice directing users to this information can be mailed with the summons/notice so court users can go to the site for further information.

RECOMMENDATION 55

Differentiate the information provided online by location.

RECOMMENDATION 56

Also distribute the same material via hardcopy and provide through law libraries and public libraries.

RECOMMENDATION 57

Provide phone-based information that users can call in to hear.

RECOMMENDATION 58

Host user focus groups to review the Judiciary website and suggest how it might be improved.

Self-Represented Litigants (Recommendations 59 - 62)

RECOMMENDATION 59

The Maryland Access to Justice Commission supports and endorses the practice of limited scope representation and provides the enclosed white paper in an effort to encourage Maryland attorneys to explore ways to expand their practice to ethically serve those who might not otherwise be able to afford their services.

RECOMMENDATION 60

The Commission recommends that the Maryland Judiciary collect data on an on-going basis from self-represented litigants, to help the court determine the needs of these individuals and respond appropriately.

RECOMMENDATION 61

The State and the Maryland Judiciary should provide sufficient and stable funding to permit the implementation and evaluation of the District Court Self-Help Center in Glen Burnie, and self-help services to complement the accelerated small claims dockets in Baltimore City, Montgomery County and Prince George's County.

RECOMMENDATION 62

The Maryland Judiciary and its justice system partners should collaborate to consolidate all services in the courthouse for victims of domestic violence, to improve access for victims to both civil and criminal remedies, to enhance access to services including legal representation, and to strengthen offender accountability.

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About the Commission

The Maryland Access to Justice Commission was appointed by Chief Judge Robert M. Bell in 2008 to develop, coordinate and implement policy initiatives to expand access to the State's civil justice system. The Commission brings together leaders and stakeholders from the Maryland Judiciary and its many justice system partners, including members of the legal services delivery system, the Maryland State Bar Association, the Executive and Legislative Branches, and the Governor's Office. The Commission seeks to create a meaningful voice for the public whose interest the commission serves.

The Commission is chaired by Hon. Irma Raker, Judge (ret.), Court of Appeals of Maryland. Hon. Ben Clyburn, Chief Judge, District Court of Maryland, serves as the Vice-Chair.

The Commission has three staff members, Pamela Cardullo Ortiz, Esq., Executive Director, Chelsea Ortega, Legal Assistant, and Iris Joiner, Administrative Assistant.

The Commission began its work by hosting a statewide forum on Access to Justice on October 20, 2008. At that meeting the Commission established six committees to investigate and address key issues:

- Access & Delivery of Legal Services Committee
- Critical Barriers Committee
- Definitions & Standards Committee
- Public Education Committee
- Safety, Accessibility & Convenience Committee
- Self-Represented Litigant Committee

Several subcommittees were established to permit the Commission to develop a more in-depth understanding of several related issues. A list of committees, subcommittees and members are included in this report.

About This Interim Report

This report reflects the work of the Commission and its committees during its first year. This report is an interim report and represents a work in progress. The Commission has undertaken a year long public inquiry to garner meaningful input from all Marylanders. This process is still underway. The Commission plans to produce a more comprehensive report and set of recommendations at the conclusion of the information gathering process.

Ensuring Meaningful Access to Justice for All Marylanders

The Maryland Access to Justice Commission was created to ensure that Marylanders have access to the courts and legal services, so they can benefit from the protections and rights the law provides. Many Marylanders forfeit critical rights or benefits because they cannot afford to obtain representation. Others face critical barriers in exercising their rights.

Maryland, like many states, faces a critical shortage of funding for civil legal services, due, in part, to the current economic downturn. In this report, the Commission examines the range of funding options used by other states to address this critical need, and makes some recommendations for strategies that might be adopted in Maryland to stabilize and support the civil legal services delivery system. Before we can provide civil justice to all Marylanders, we need to ensure that individuals can obtain legal representation when they need it. Adequate funding will help ensure Maryland has a robust civil legal services delivery system.

Marylanders appear on their own, without a lawyer, in our courts in record numbers.¹ The Commission makes recommendations that, if implemented,

¹ In Fiscal Year 2007, 68% of domestic cases included at least one self-represented litigant at the time the answer was filed. Forty percent (40%) of the cases included two or more self-represented litigants, meaning usually that both parents were without counsel. In 72% of domestic trials, at least one person is participating in the trial without a lawyer. (*Annual Report of the Maryland Circuit Court Family Divisions, FY07*). Maryland Family Law Self-Help centers serve between 35,000 and 40,000 people each year. Even larger percentages of self-represented persons appear in Maryland District Court.

would enhance the ability of the self-represented, those who go without counsel, to navigate the court system.

Other Marylanders encounter language or literacy barriers, or challenges because of varying physical abilities. Others may poorly understand their rights or lack an understanding of how to use the courts or seek legal help because of cultural differences.

The Commission hopes to improve public understanding of the civil justice system and the resources available.

In addition, this Interim Report examines several law reform issues designed to enhance access to civil justice. Many Marylanders are surprised to learn that while there exists a right to counsel in criminal matters, in most civil matters, the State is not obligated to provide you counsel. The Commission addresses in the report the possibility of a civil right to counsel. The Commission has also developed a white paper examining the ethical climate for the practice of limited scope representation.

Maryland has a diverse range of programs designed to provide legal assistance to persons of limited means, earning a national reputation for innovation in promoting *pro bono* representation, and enhancing access to the courts for the self-represented. Access to the justice system is a foundational resource; without it a just and civil society cannot be preserved.

Through the work of the Commission, Maryland has an opportunity to provide all Marylanders with a vibrant and accessible civil justice system. The Commission offers this report and these recommendations in the hope that progress will continue to be made to provide access to justice for all in Maryland.

Maryland Access to Justice Commission



ACCESS & DELIVERY OF LEGAL SERVICES

This section of the report includes recommendations designed to increase the capacity of the state's civil legal services delivery system and promote better access to private counsel. Areas covered include:

- Civil right to counsel
- Describing the continuum of services
- Fee-shifting statutes
- Funding for civil legal services

Civil Right to Counsel

The Maryland Access to Justice Commission has initiated a discussion about how a civil right to counsel might look in Maryland, if such a right were established, either by legislation or litigation. Because the Commission includes representatives from the Judicial as well as the Executive and Legislative Branches, it has adopted a strategy that focuses on the *implementation* of a civil right to counsel, rather than trying to discern whether the State's Constitution or existing laws contain an inherent right. That is the purview of advocates. The practical aspects of a civil right to counsel, however, often impact discussions about whether a right is or should be established. The Commission felt it could add to the statewide dialogue on this issue by discerning and evaluating various implementation strategies. In other words, if Marylanders had a right to counsel in civil matters, how might it be implemented in Maryland?

The Scope of the Right

As a threshold matter, any implementation would be affected by the scope of the right envisioned. Maryland has a statutory right to counsel in certain civil matters, including Child In Need of Assistance cases and Terminations of Parental Rights. Several states, notably New York and Massachusetts, have broader statutory rights to counsel, including a right to counsel in child custody matters. Many organizations advocating for a civil right to counsel envision a right that attaches only in adversarial proceedings in basic human needs cases. While it might be ideal to provide a right to counsel in all civil matters, a broader right to counsel would be extremely costly to implement. Rather, most advocates endorse a right to counsel only in those cases where the issues are important to individual or family safety or well-being. Professor Russell Engler, of the New England School of Law, has suggested a context-based, targeted approach to establish a right to counsel in civil matters, one which focuses on basic human needs:

It is in these settings that those without counsel forfeit important rights and suffer substantial injustice due to the absence of counsel. The devastating consequences of the loss of one's child and loss of one's home underscore the importance of extending the right to appointed counsel to these areas. Many parents would choose to serve thirty days in prison before giving up custody of their children. Many tenants would similarly choose a temporary loss of liberty to avoid eviction and homelessness. The loss of custody or housing might be both more devastating and of greater duration than a thirty-day jail sentence, yet litigants are not entitled to appointed counsel in custody and housing cases. The right to appointed counsel must more accurately reflect our societal values, rights and interests.¹

The American Bar Association unanimously adopted Resolution 112A on August 7, 2006, endorsing a civil right to counsel in basic human needs cases:

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, as determined by each jurisdiction.²

The ABA set forth several reasons underlying Resolution 112A. The ABA notes that the resolution is a logical next step in its “long history of support for achieving equal justice in the United States.”³

¹ Rusell Engler, *Shaping a Context-Based Civil Gideon from the Dynamics of Social Change*, 15 TEMP. POL. & CIV. RTS. L. REV. 697, 712 (2006).

² American Bar Association, RESOLUTION 112A, 1 (August 7, 2006).

³ *Id.*, 2.

Recommendation: Maryland Should Embrace the Principle of a Civil Right to Counsel

RECOMMENDATION 1

The Maryland Access to Justice Commission supports the principle that low-income Marylanders should have a right to counsel at public expense 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 Commission has endorsed the concept of a broader right to counsel, without saying where it lies – whether it is implicit in the laws or Constitution of the State, or whether it needs to be established by new law. Through its Civil Gideon/Judicare Subcommittee, the Commission plans to proceed with a further, more in depth examination of how a right, once established, might be implemented.

Implementation Issues

The Commission has investigated various efforts, in Maryland and across the country, to provide broader access to counsel in civil matters. The Commission has reviewed information, articles and sample statutes.

The Massachusetts Pilot Projects. The Boston Bar Association has launched two pilot projects to test the theory that an expanded civil right to counsel should target the cases in which counsel is most likely to impact the outcome. The Association secured funding and recently began offering counsel in two settings: (a) a specialized housing court; and (b) a general district court. Cases are selected for representation that fit a narrow set of criteria. The project uses a randomized controlled trial to evaluate the impact of the program.

Maryland's Judicare Project. The Maryland Administrative Office of the Courts (AOC) and the Maryland Legal Services Corporation (MLSC) have joined together in a pilot program to launch a locally-controlled, state-funded system through which income-eligible clients can receive civil legal services. AOC

and MLSC contributed funding and solicited grant applications from local organizations interested in operating a local Judicare program. The program was envisioned, in part, to test how best to administer a statewide approach to providing full representation when warranted. The Maryland Judiciary Research Consortium is evaluating the program.

Lessons from the Implementation of the Right to Counsel in Criminal Matters. In *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel*,⁴ the National Right to Counsel Committee examines the state of the right to counsel in criminal and delinquency matters since *Gideon v. Wainwright*.⁵ They make a number of recommendations to overcome the issues that have impeded the full implementation of the right in criminal matters, that may have some bearing on how a civil right might be implemented.

The California State Equal Justice Act. In envisioning how to implement a comprehensive right to counsel, the drafters of the California State Equal Justice Act – a model state act – conceived of an equally comprehensive approach.⁶ They propose using a full range of types and levels of law-related services to implement the right to equal justice, including self-help assistance, lay advocates, and limited legal representation, as well as full representation.

The California State Basic Access Act. Drafters in California also tried their hand at drafting a model state statute to implement a narrower right to counsel, along the lines described in the ABA resolution.⁷ This model act would limit the right to cases involving shelter, sustenance, safety, health, and child custody, and only low-income clients would be eligible for free legal services.

State Civil Defender Offices. Two states have adopted a statewide approach to administer a civil right to counsel. Alaska has a statewide public

⁴ NATIONAL RIGHT TO COUNSEL COMMITTEE, *JUSTICE DENIED: AMERICA'S CONTINUING NEGLECT OF OUR CONSTITUTIONAL RIGHT TO COUNSEL* (April 2009) available at <http://tcpjusticedenied.org/> (last visited October 19, 2009).

⁵ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁶ CALIFORNIA MODEL STATUTE TASK FORCE, *STATE EQUAL JUSTICE ACT* (November 2006), available at http://www.brennancenter.org/page/-/d/download_file_38656.pdf (last visited October 19, 2009).

⁷ CALIFORNIA MODEL STATUTE TASK FORCE, *STATE BASIC JUSTICE ACT* (March 2008), available at http://brennan.3cdn.net/c8d7c0be3acc133d7a_s8m6ii3y0.pdf (last visited October 19, 2009).

defender office and an Office of Public Advocacy, both of which represent civil and criminal litigants with a right to counsel. In Montana, the statewide public defender office represents income-eligible persons in both civil and criminal matters.

In reviewing these efforts and options, the Commission has identified a list of variables or issues that would need to be decided in implementing a civil right to counsel. These issues and various options are summarized in the following table. The Commission plans to continue its work by evaluating and recommending a particular implementation strategy for the State, after considering the various options detailed below.

IMPLEMENTATION ISSUES FOR CONSIDERATION

Implementation Issues	Variants	Examples
1. Scope of case types to which the right attaches	a. Civil matters generally b. Basic human needs cases	a. CA State Equal Justice Act; the right to counsel in criminal matters works this way. b. CA State Basic Access Act; ABA Resolution (Aug. 7, 2006).
2. Narrow or broad subject matter criteria	a. Narrow: Additional criteria applied including, for example: i) tied to mental disability; ii) involves criminal conduct; or iii) power imbalance (one side represented). b. Broad: Case type alone determines eligibility.	a. MA Civil Gideon pilot projects; MD Contested Child Custody Representation Project. b. MD Judicare (family law pilot).
3. Narrow or broad case posture criteria	a. Narrow: Right attaches only for court proceedings or specific case activities. b. Broad: Right attaches when the user decides they have a legal problem or	

Implementation Issues	Variants	Examples
	when a case is filed or contemplated.	
4. Service delivery	<p>a. Staff attorney model – like the Office of the Public Defender – set up an entity that hires lawyers and provides the service.</p> <p>b. Legal services model – provide grants or contracts to legal services organizations to provide the service.</p> <p>c. Private attorney model – contract with private attorneys to provide the service or, in the alternative, allow users to hire their own attorney and reimburse the attorney (maybe voucher-driven).</p>	<p>a. Office of the Public Defender; Alaska’s Office of the Public Advocacy.</p> <p>b. Maryland’s Protective Order Advocacy & Representation Programs (POARP); MD Judicare.</p> <p>c. An example of the former is the Maryland Legal Services Program (MLSP) under the Dept. of Human Resources which provides attorneys for children in CINA and TPR cases; an example of the latter is the old MD Judicare program.</p>
5. Program administration	<p>a. Statewide, centralized</p> <p>b. Statewide, collaborative</p>	<p>a. CA State Basic Access Act. In this example the created entity has more direct control over funding, and the state has more direct ownership. The MD Public Defender system or a state civil advocate office would be another example of this model.</p> <p>b. CA State Equal Justice Act is centralized but exercises less control and is more dependent on existing players, e.g., the legal services community. It plays a role in funding and</p>

Implementation Issues	Variants	Examples
	<p>c. Decentralized</p>	<p>oversight but is not the sole player.</p> <p>c. An example of this would be where the court appoints local counsel who can petition for fees. This is how it works in many instances currently where the court has the discretion to appoint counsel but there is no formal mechanism for managing the process. Each court, for example, might maintain a panel of attorneys they deem eligible.</p>
<p>6. Differentiate various forms of legal service</p>	<p>a. Differentiated – a person has a right to legal assistance, but the level of assistance is determined by the need of the person or the posture of the case.</p> <p>b. Undifferentiated – a person is entitled to counsel as soon as they have a problem or a case is filed, regardless of posture.</p>	<p>a. CA State Basic Access Act; CA State Equal Justice Act.</p> <p>b. The public defender system is somewhat undifferentiated. A specific event triggers the appointment of counsel, but there is no attempt made to see if a lesser version of legal help might suffice; the level of legal help provided is at the discretion of counsel, based on their assessment of the case.</p>
<p>7. Funding Source</p>	<p>a. State – general revenue appropriation.</p>	<p>a. CA Basic Justice Act; MD Public Defender; MLSP.</p>

Implementation Issues	Variants	Examples
	<p>b. State – special funds</p> <p>c. Federal</p> <p>d. Private</p> <p>e. Small client fee for services</p>	<p>b. MLSC makes grants to providers using several sources, all of which are really special funds – they are derived from a particular source and the amount available may vary considerably. Current sources: IOLTA, filing fee surcharge plus a small appropriation.</p> <p>c. There is federal funding available where the federal government has found value in providing representation. Examples in MD include the Legal Aid Bureau which receives LSC funding and the POARP programs, many of which were launched with VAWA funds.</p> <p>d. Pilot projects can be funded initially with private funds.</p> <p>e. MD Judicare – initial fee of \$25</p>
8. Compensation Rates	<p>a. Uniform</p> <p>b. Not Uniform</p>	<p>a. MD Judicare program</p> <p>b. MLSP; other programs where fee based on successful contract bids. The CA State Basic Access Act anticipates regional differences in compensation.</p>

Implementation Issues	Variants	Examples
9. Income-eligibility Criteria - Uniformity	<p>a. Uniform</p> <p>b. Not Uniform</p>	<p>a. MD Judicare; MLSC funded programs.</p> <p>b. The current system used when judges have discretion to appoint but there is no formal program through which it is done.</p>
10. Income-eligibility Criteria - Level	<p>a. Low-income only</p> <p>b. Moderate –income included</p>	<p>a. CA State Equal Justice Act</p> <p>b. CA Basic Justice Act</p>
11. Caseload	<p>a. Standards</p> <p>b. No Standards</p>	<p>a. The guidelines for CINA/TPR child counsel in MD are an example of a program that includes a caseload standard. A workload assessment can be done to determine reasonable caseload size and set benchmarks.</p> <p>b. Discretionary appointment system.</p>
12. Quality Assurance	<p>a. Standards</p> <p>b. No standards</p>	<p>a. MD Guidelines of Practice for child counsel in child custody and separate standards for CINA/TPR</p>
13. Independence	<p>a. Housed within and agency of the Executive or Judicial branch</p>	<p>a. MLSP – this program is operated by DHR which interestingly has their own attorneys in each CINA case representing the social</p>

Implementation Issues	Variants	Examples
	<p>b. Creation of a separate state agency in any branch</p> <p>c. Independent agency with directors appointed from the several branches and other entities; housed in any branch of government for administrative purposes only. Presumably it could also be housed in the Bar or created as a non-profit entity. Too much independence could lead to future lack of support, however.</p>	<p>services agency, in addition to the attorney for the child funded by the Dept.</p> <p>b. The MD Office of the Public Defender.</p> <p>c. The CA State Basic Access Act and the CA State Equal Justice Act; also included in the recommendations of the National Right to Counsel Committees.</p>
14. Financial contribution of parties	<p>a. No fee</p> <p>b. Small start-up fee</p> <p>c. Reduced hourly fee</p>	
15. Timeliness of appointments	<p>a. Attorney engaged at client's initiative only.</p> <p>b. Appointment triggered by case event.</p> <p>c. Appointment triggered by case event and further developments (e.g., case becomes contested or one side gets an attorney).</p> <p>d. Appointment triggered by judicial discretion only.</p>	
16. Advice of rights	Variable. Whether an established right to counsel is violated may turn on whether and when the person	

Implementation Issues	Variants	Examples
	<p>was advised of the right. Key points would have to be identified where courts and others would be required to notify an unrepresented party of the right – tied to when the right is triggered. Presumably there would need to be major public education efforts to create an awareness and understanding of the right. This will require an additional investment.</p>	
17. Vexatious litigants	<p>Program capacity will always be vulnerable to the “vexatious litigant” or frequent court customer. No one enters the criminal justice system voluntary; the civil justice system is more or less voluntary, at least for half the people there. Some people “volunteer” more than others. Any implementation strategy will need to devise a way to deal with these individuals so they do not sap the system and the funding.</p>	<p>See the British Courts’ online small claims system, www.moneyclaim.gov.uk . There is a list of “vexatious litigants” who are not allowed to use this court-operated online dispute resolution program for small claims, and who must seek the court’s permission before filing a civil claim. This may raise some due process concerns.</p>
18. Rights on appeal	<p>a. Rights on appeal – may require delineating substantive eligibility requirements.</p> <p>b. No rights on appeal.</p>	<p>a. CA State Basic Access Act and the CA State Equal Justice Act</p>

Continuum of Services

The Maryland Access to Justice Commission has developed a set of graphics for use by the Commission and its various justice system partners to help promote public understanding of the civil legal services delivery system, and the critical role that system plays in preserving a civil society. The Commission has developed graphics that represent the following:

The Gap in Civil Legal Services

- Percentage of Legal Problems Experienced by Low-Income Persons that are Addressed with the Help of a Lawyer (Pie Chart)
- How Many Must be Turned Away? LSC-Funded Programs (National Data) (Bar Chart)
- Why Is it So Hard for Low-Income Persons to Get Legal Help in Civil Matters When They Need It? [Legal Services Attorneys + Pro Bono FTEs]
- Why Is it So Hard for Low-Income Persons to Get Legal Help in Civil Matters When They Need It? [Legal Services Attorneys Only]

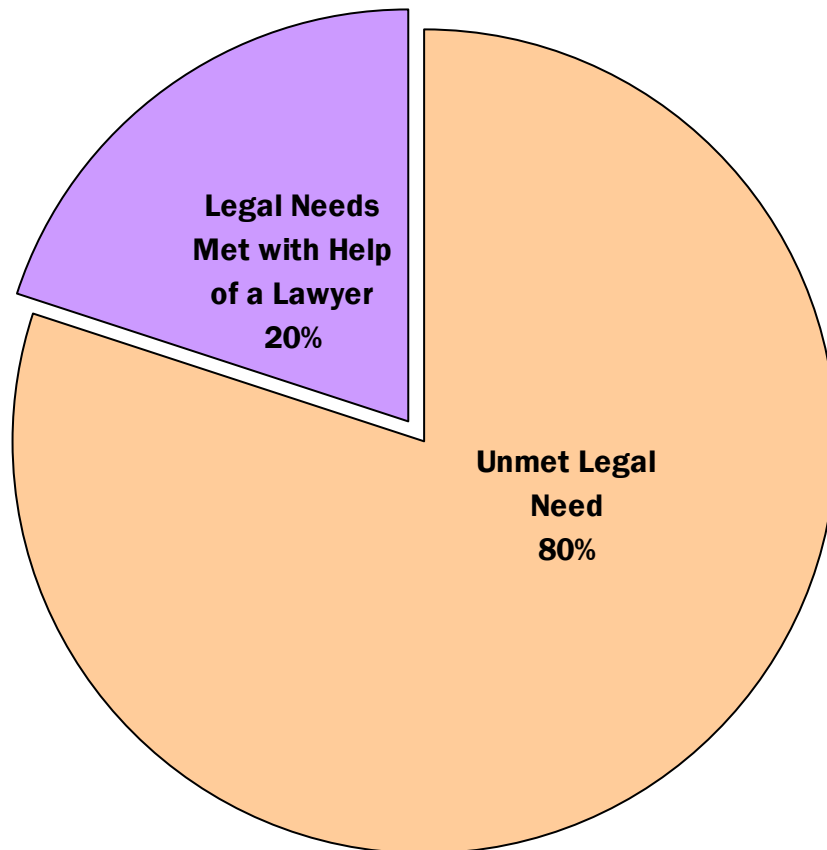
The Spectrum of Services Provided in Maryland

- What Types of Cases do Legal Services Clients Need Help With in Maryland? (Pie Chart)
- Where do Legal Services Clients Live in Maryland? (Pie Chart)
- The Civil Legal Services Delivery System – Demand v. Intensity of Service

Resources Supporting Civil Legal Services

- Maryland Lawyers' Contributions to Legal Service

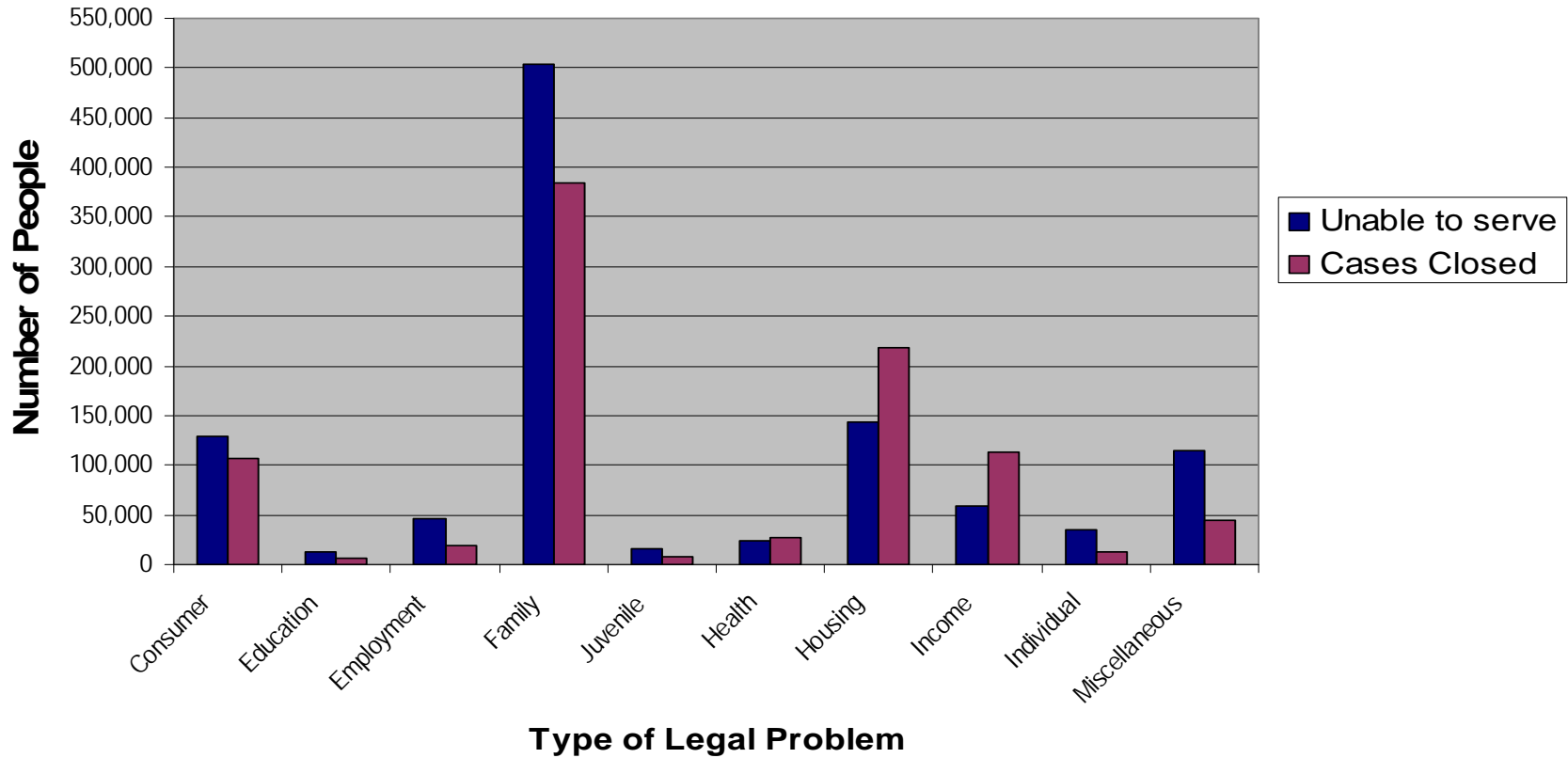
Percentage of Legal Problems Experienced by Low-Income Persons that are Addressed with the Help of a Lawyer



Legal Services Corporation, *Documenting the Justice Gap in America* (June 2007).

**How Many Must be Turned Away?
LSC-Funded Programs (National Data)**

CASES CLOSED COMPARED TO THOSE THE PROGRAM WAS UNABLE TO SERVE



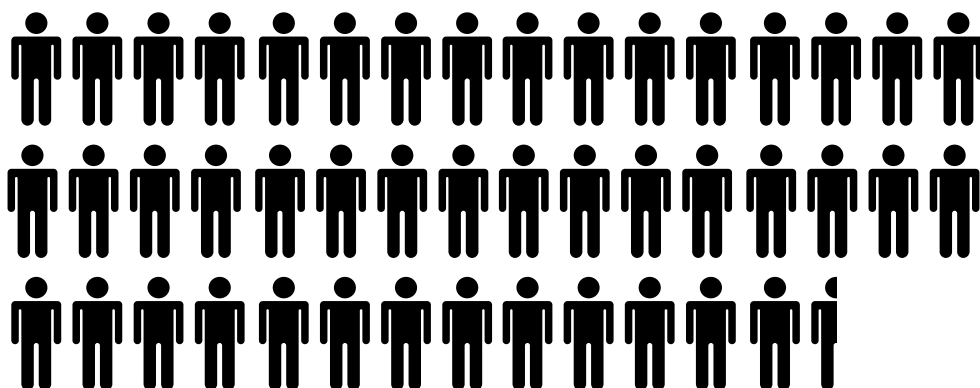
Source: Legal Services Corporation, *Documenting the Justice Gap in America* (June 2007).

Note: The number of “Cases Closed” reflects those individuals who actually received some type of assistance. Because this is national data and states evaluate their programs differently, the data does not show which percentage of those individuals who received service obtained full representation, which received only brief advice or some other service. The data above also does not reflect the number of individuals who did not seek assistance, or who did not know how to access services. Nor does it reflect what the individuals seeking help needed and whether the level of service available was sufficient.

Why Is It So Hard for Low-Income Persons to Get Legal Help in Civil Matters When They Need It?




No. of persons per lawyer in Maryland: 162.8



No. of poor persons per legal services lawyer or pro bono equivalent in Maryland: 455.7

Maryland Population (2008 estimate): 5,633,597
 No. of Active Full-Time Lawyers in Maryland: approx. 34,600
 Percent of Marylander's below poverty (2007): 8.3%
 Percent of Lawyers Employed in Legal Services Positions (2007): 1.5% of all lawyers (482 lawyers)
 FTEs of Pro Bono Hours Provided by MD Lawyers: 534 FTEs

 = 10 people

Sources:

Administrative Office of the Courts, Current Status of Pro Bono Service Among Maryland Lawyers, Year 2007 (October 27, 2008).

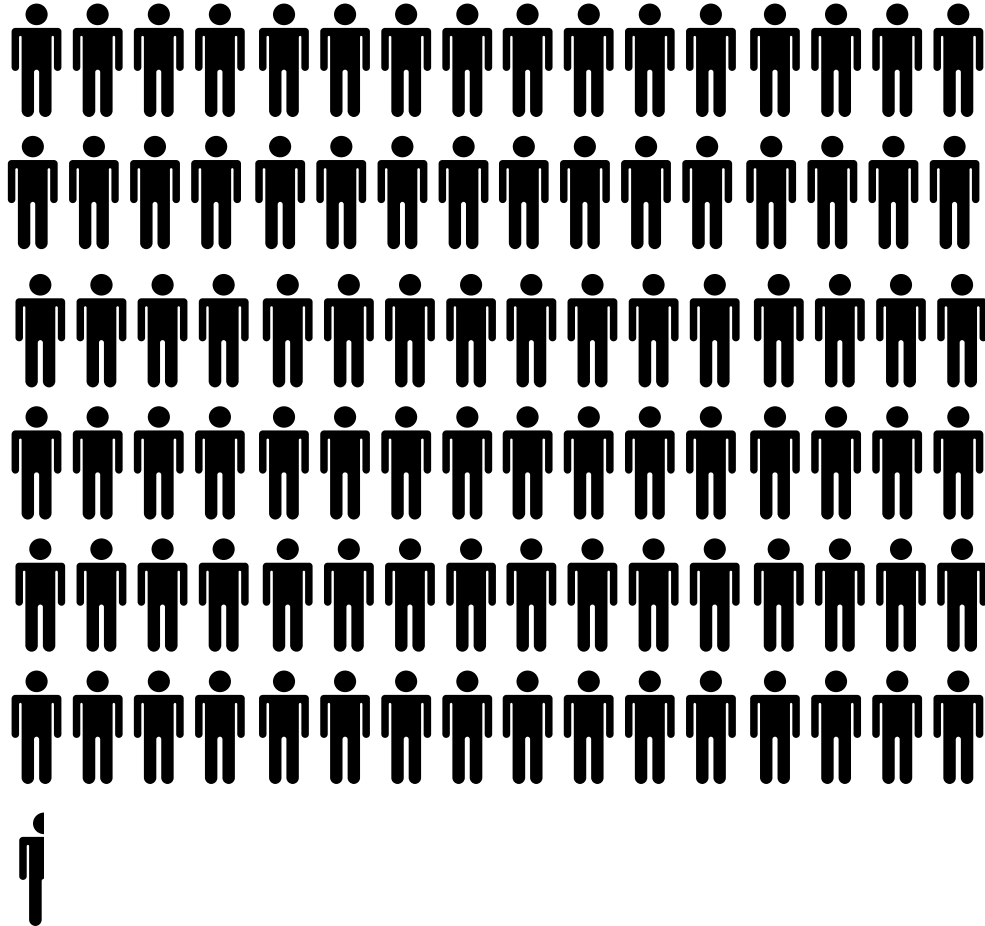
U.S. Census Bureau (<http://quickfacts.census.gov/qfd/states/24000.html>) (last visited: 6/25/09).

CHART 3: Legal Services Attorneys + Pro Bono FTEs

Why Is It So Hard for Low-Income Persons to Get Legal Help in Civil Matters When They Need It?




No. of persons per lawyer in Maryland: 162.8



No. of poor persons per legal services lawyer in Maryland: 970

Maryland Population (2008 estimate): 5,633,597
 No. of Active Full-Time Lawyers in Maryland: approx. 34,600
 Percent of Marylander's below poverty (2007): 8.3%
 Percent of Lawyers Employed in Legal Services Positions (2007): 1.5% of all lawyers (482 lawyers)

 = 10 people

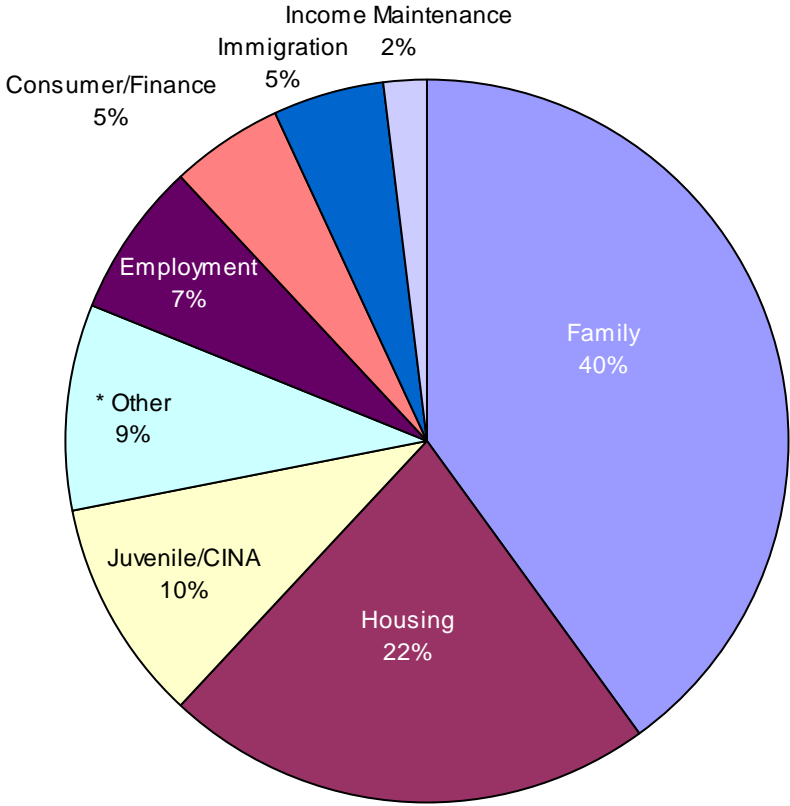
Sources:

Administrative Office of the Courts, Current Status of Pro Bono Service Among Maryland Lawyers, Year 2007 (October 27, 2008).

U.S. Census Bureau (<http://quickfacts.census.gov/qfd/states/24000.html>) (last visited: 6/25/09).

**MLSC Funded Legal Services Providers
TYPES OF CASES CLOSED**

**What Types of Cases do Legal Services Clients Need Help
With in Maryland?**

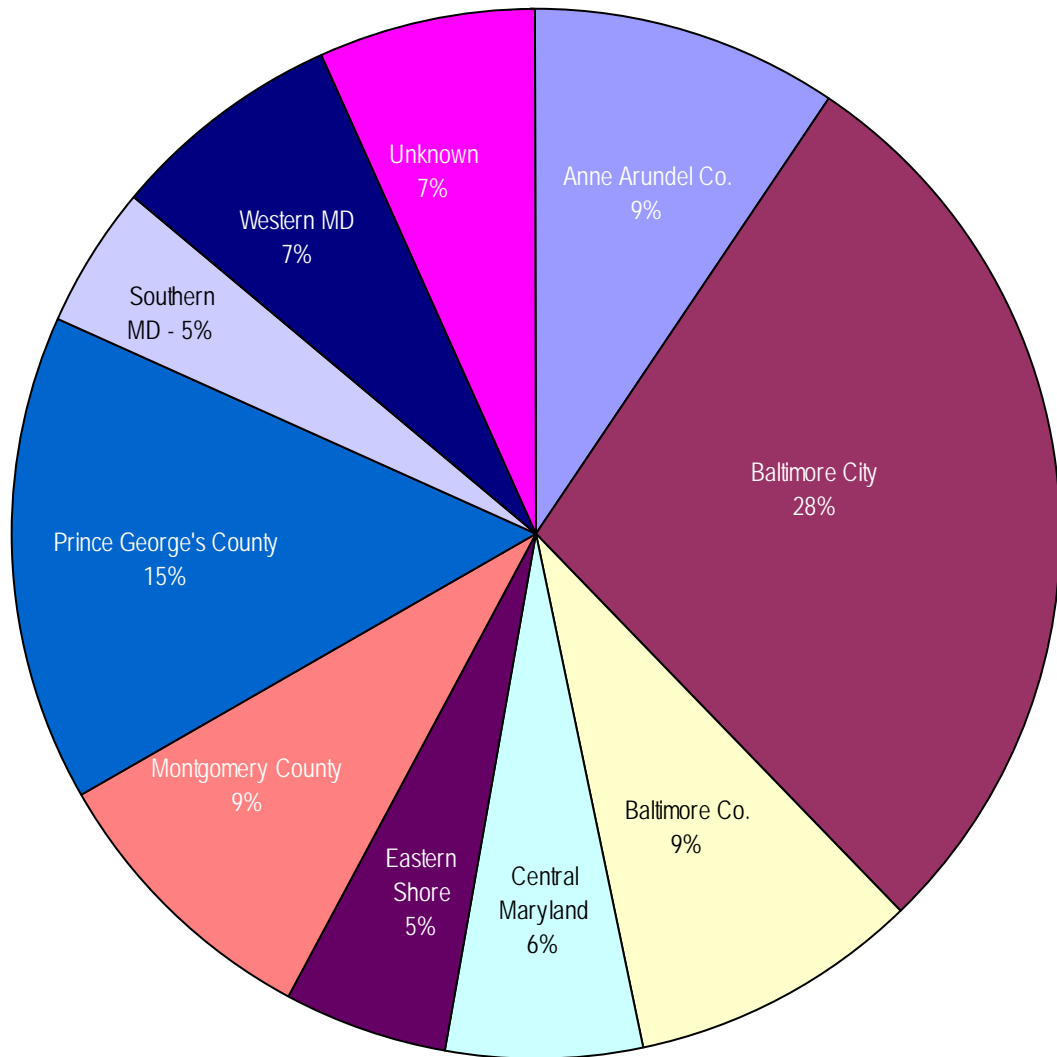


** Education, Health, Individual Rights, Wills and Trusts and Miscellaneous issues.*

SOURCE: Maryland Legal Services Corporation, Fiscal Year 2008 Annual Report: July 1, 2007 to June 30, 2008.

**MLSC Funded Legal Services Providers
RESIDENCE OF CLIENTS SERVED**

Where do Legal Services Clients Live in Maryland?

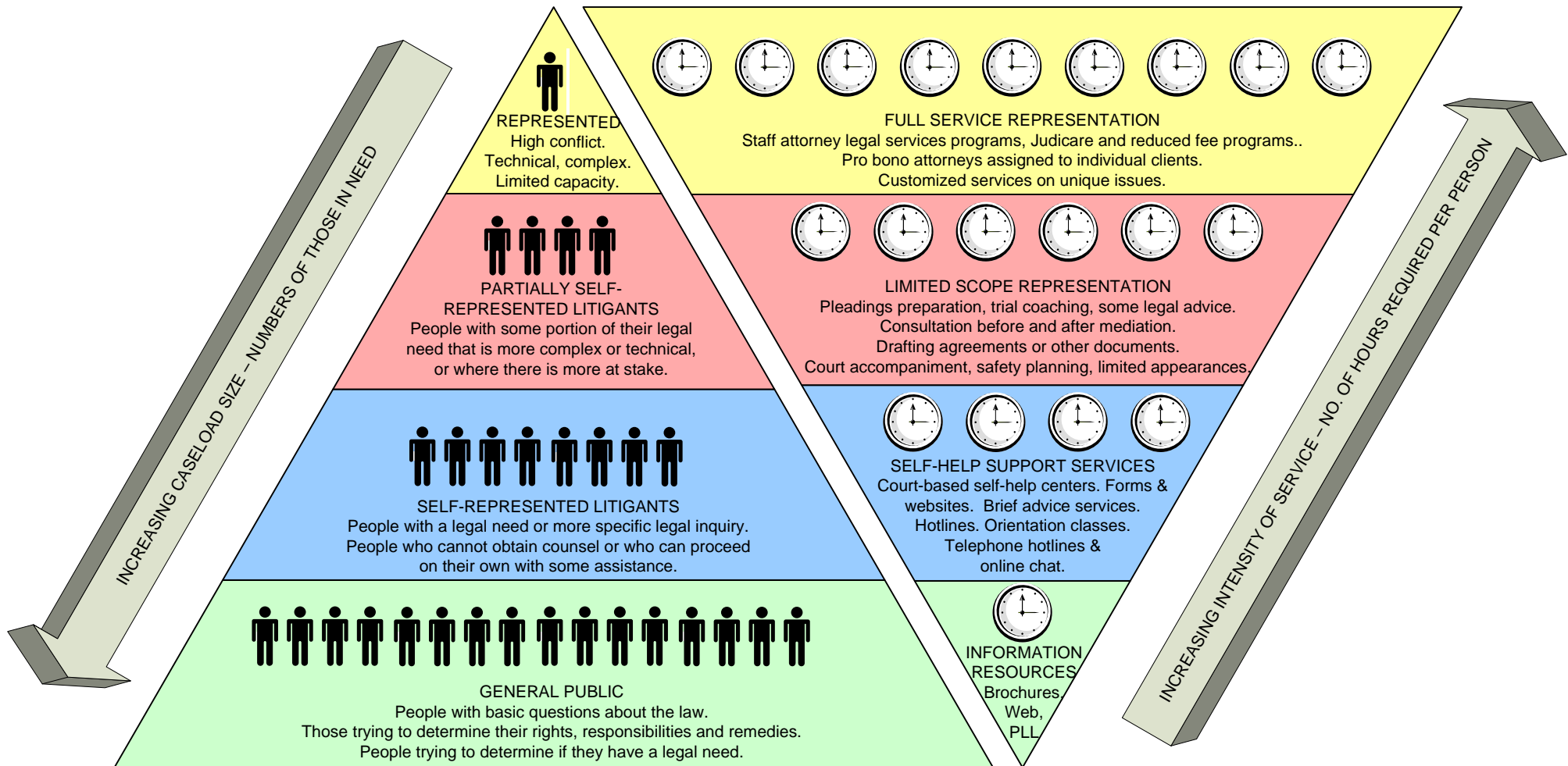


Central Maryland: Carroll, Harford and Howard Counties
Eastern Shore: Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico and Worcester Counties
Southern Maryland: Calvert, Charles and St. Mary's Counties
Western Maryland: Allegany, Frederick, Garrett and Washington Counties.

SOURCE: Maryland Legal Services Corporation, Fiscal Year 2008 Annual Report: July 1, 2007 to June 30, 2008.

The Civil Legal Services Delivery System

LEGAL SERVICE PROVIDERS



This illustrates the narrowing effect that happens when individuals seek help for a legal problem. Many individuals begin by seeking general assistance. Most require only brief advice or general information. For some, a higher level of assistance is required. Because only a small percentage of cases actually goes to trial, even fewer will require full representation at trial. The legal services community must offer a range of services appropriate to the needs of those they serve. The intensity of service (and cost) is inversely proportional to the number of persons who need that level of service. An effective delivery system will be one with a range of services so that services can be appropriately, and cost-effectively matched to the need.

Maryland Lawyers' Contributions to Legal Services



Time

In 2007, Maryland Lawyers contributed

1,069,666 hours

of pro bono legal service to persons of limited means.



Money

In 2007, Maryland Lawyers contributed

2,957,450 dollars

To organizations that provide legal services to persons of limited means.

SOURCE: Current Status of Pro Bono Service Among Maryland Lawyers, Year 2007. October 27, 2008.
Submitted by: ANASYS, Inc. Available at: www.mdcourts.gov.

Fee-Shifting Statutes

The Maryland Access to Justice Commission recognizes that fee-shifting statutes provide an important opportunity for expanding access to legal representation. Fee-shifting statutes are part of an overall system designed to empower private citizens to enforce the law. This “private attorney general” scheme is intended to supplement government enforcement of the law. It is based on the recognition that government may not be able to enforce all provisions of every law that make up the complex regulatory scheme created to protect individual rights. Fee-shifting statutes are laws which permit individuals who have prevailed in court to obtain attorneys fees. A broad range of Maryland statutes provide for fee-shifting, including those governing:

- Wages and hours of employment
- Wage payment and collection
- Discrimination and civil rights
- Worker’s compensation
- Consumer protection
- Email fraud
- Whistleblowers

Fee-shifting provisions are especially important when the amount in controversy is relatively small. They are included in these statutes to permit individuals with small claims an opportunity to enforce those claims, even when the returns might be too small for them to engage an attorney on a contingency or hourly fee basis.

Equally important is the access fee-shifting statutes provide to non-monetary relief. This has the potential to leverage modest individual claims into larger forms of relief likely to promote systemic change that may benefit many others, i.e., injunctive relief or statutory change.

When a low wage earner retains counsel to enforce a wage claim, the case may have great significance and urgency to that individual. Although the amount in controversy may be small, those funds may be what is needed to ensure the low wage earner can purchase food for their family, or pay rent and avoid eviction. In

the absence of fee-shifting statutes, the individual would be unable to afford an attorney to enforce the claim. An attorney who knows fees are available from the opposing party is more likely to take cases with merit. Fee-shifting statutes put the onus properly on those who act in contravention of the law or without just cause. Fee-shifting statutes are designed not only to enhance access to the courts, but also to deter inappropriate conduct.

To strengthen the use of fee-shifting provisions in Maryland, the Maryland Access to Justice Commission makes the following recommendations:

- **Promote Judicial Education on Fee-Shifting Statutes**

RECOMMENDATION 2

The Maryland Judicial Institute should develop and offer a regular course for Maryland judges on the “The Judicial Role in Maryland Fee-Shifting Statutes.” A complete course proposal, including a statement of need, is included as Appendix A.

- **Adopt a General Fee-Shifting Provision in Maryland Comparable to 42 USC § 1988**

RECOMMENDATION 3

The Maryland Access to Justice Commission endorses the principle of a general fee-shifting provision as a means to promote access to justice through an award of attorney’s fees for individuals successfully enforcing their rights under Maryland law or the Maryland Constitution.

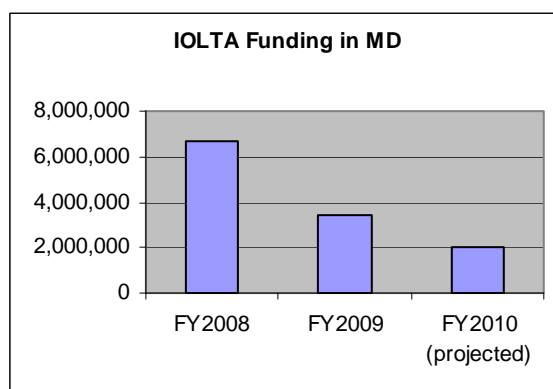
Federal claimants have the benefit of 42 USC § 1988. There is no state equivalent in Maryland, forcing many litigants to focus on federal law claims and sue in federal court when they could instead litigate in their own communities under Maryland law if they could attract counsel. This private attorney general method of enforcing individual rights is as important under state law as it is in federal courts. Such a provision would

have the added benefit of rendering uniform the many different fee-shifting provisions that currently exist in Maryland's employment, consumer protection, financial, real property, civil rights and other laws.

Funding for Civil Legal Services in Maryland

Before the newly appointed Maryland Access to Justice Commission held its first meeting, the United States was plunged into its most significant financial crisis since the Great Depression. In this, its first year, the Commission has been dominated by concerns about the impact of that crisis upon the civil legal services delivery system in Maryland. That crisis has had an impact on several funding sources in the State.

One primary source of funding for legal services in Maryland is the Interest on Lawyers Trust Account (IOLTA) program. These funds are administered by the Maryland Legal Services Corporation (MLSC) which makes grants to 35 legal services organizations serving Maryland residents. Due to the economic crisis and unprecedented low interest rates, IOLTA income has fallen far short of prior years. In Fiscal Year 2008, IOLTA accounts generated \$6.7 million in income. During Fiscal Year 2009, which ended June 30, 2008, IOLTA accounts generated only \$3.9 million, approximately 41% less than the prior year. Because of these reduced resources, MLSC was forced to cut grants to legal services grantees by approximately 20%, for the funding year which began July 1, 2009. MLSC projects an additional 49% decline for the current fiscal year, resulting in a total loss of IOLTA revenue of approximately 70% -- a \$5 million shortfall – over a two year period. This will again significantly reduce grants to legal services providers for Fiscal Year 2011.



Some states have been able to secure state appropriations to support civil legal services. In Maryland, MLSC receives a modest statutory appropriation of

\$500,000 from the Abandoned Property Fund. Because it is statutorily designated, the amount has remained constant over the last several years. Nonetheless, the economy has put tremendous pressure on State legislatures as well as civil legal services, and during the last legislative session, this modest appropriation was targeted to be cut. The fund was restored late in the session, but it is clearly vulnerable and may face challenges in the future as the State faces additional, significant budget deficits.

Perhaps the most stable funding source for civil legal services in these volatile times have been filing fee surcharges. A surcharge is added to the court filing fee in most case types. Those funds are deposited into the MLSC Fund to be used for additional grants to legal services providers. Filing fee surcharges generate approximately \$7.5 million per year. Because this revenue is generated from court filings and the fees are not interest-based, they are a more stable and reliable source of funding for civil legal services than the IOLTA program.

MLSC Revenue

Fiscal Year	2007	2008	2009	2010 (Projected)
IOLTA	\$ 6,384,000	\$ 6,723,000	\$ 3,950,000	\$ 2,000,000
Filing Fee Surcharge	\$ 6,889,000	\$ 7,475,000	\$ 7,898,000	\$ 7,500,000
Abandoned Property Fund	\$ 500,000	\$ 500,000	\$ 500,000	\$ 500,000
	\$ 13,773,000	\$ 14,698,000	\$ 12,348,000	\$ 10,100,000

Funding Strategies in Troubled Times

The Maryland Access to Justice Commission was formed to enhance the quality of justice in civil legal matters for persons who encounter barriers when dealing with the courts or trying to solve a legal problem by, among other things, strengthening the State’s legal services delivery system. The Commission began with the hopes of broadening access to legal services for low- and moderate-income Marylanders, but instead, has been primarily concerned with the preservation of the limited resources that have historically been available.

In confronting this crisis, the Commission has collaborated with the Maryland Judiciary, MLSC and key stakeholders to review the various funding strategies that might be adopted to strengthen funding for civil legal services now

and for the future. The Commission has provided information on the range of responses other states have adopted to generate funding in the face of the financial crisis.

Tweaking IOLTA. In December 2007, the Maryland Court of Appeals adopted an IOLTA comparability rule, effective April 1, 2008, which requires attorneys to deposit IOLTA funds in banks that offer interest rates on IOLTA accounts that are comparable to the bank's other commercial rates. About half the states have adopted a similar rule. The rule change works well during normal times to increase IOLTA funding. Maryland's rule provides financial institutions the option of complying with the Rule by paying a "safe harbor rate" of 55% of the Federal Funds Rate. Unfortunately, in the Fall of 2008, the Federal Funds Rate dropped to 0-.25%, significantly reducing interest income on these accounts.

Maryland might consider making minor adjustments to the rules governing the IOLTA program, although none of these innovations is likely to make a significant difference. MLSC continues its efforts to negotiate higher rates with the banks, and had success in working to reduce bank service charges. Other states have succeeded in changing the "safe harbor rate" calculation method. These efforts, even if politically palatable and successful, are unlikely to overcome the significant decline Maryland is seeing in IOLTA revenue.

Increasing Filing Fee Surcharges. Many states have successfully generated funds to support civil legal services by increasing filing fee surcharges. In Maryland, the filing fee surcharge has been the most stable source of funding. Even with the current surcharge, Maryland's filing fees are low as compared to neighboring states. Maryland has the highest median income in the country, yet court filing fees are relatively low compared to other states.¹ An increase in the Circuit Court filing fee surcharge from the current \$25 to \$70 would generate an additional 3.8 million. An increase in District Court filing surcharges, to make the total fee uniform for all civil case types (\$40) (increasing the summary ejection surcharge from \$5 to \$36 (\$32 in Baltimore City) and increasing the

¹ Les Christie, *Where to Find the Fattest Paychecks*, CNNMONEY.COM, September 22, 2009, available at http://money.cnn.com/2009/09/21/news/economy/highest_income_census/?postversion=2009092203 (last visited October 19, 2009).

small claims surcharge from \$10 to \$30) would generate an additional \$20 million.

Pursuing a State Appropriation. Since the economic downturn began, a number of states have provided significant appropriations to help their legal services community survive despite the reduction in interest-based income, as indicated in the table, below.

State Appropriations Supporting Civil Legal Services

<i>State</i>	<i>Revenue from State Appropriation</i>
California	\$ 11 million
District of Columbia	\$ 3.6 million
Georgia	\$ 2 million
Massachusetts	\$ 11 million
Minnesota	\$ 13 million
New Jersey	\$ 29 million (includes filing fee income)
New York	\$ 5.1 million
Pennsylvania	\$ 3.1 million
Virginia	\$ 2 million
Washington	\$ 11.6 million (includes filing fee income)

While state appropriations can become a stable and reliable source of funding over time, the budget deficit facing the State is likely to mean that this option will not be feasible for some time to come.

Attorney Registration Fees. Eight states generate funds from attorney registration fee add-ons to support civil legal services.

Attorney Registration Fees Supporting Civil Legal Services

State	Funds Generated	Dedication Portion of the Fee
Illinois	\$2.6 million	\$42
Minnesota	\$1 million	Up to \$50
Missouri	\$436,000	\$20
Ohio	\$400,000	Unknown
Pennsylvania	This fee was only recently adopted and has not yet been implemented.	\$25
Texas	\$1.98 million [A portion of the fees generated also provide for indigent defense].	\$65
West Virginia	\$150,000 [The fees generated are provided for 3 purposes including civil legal services.]	\$65
Wisconsin	\$815,000	\$50

Maryland has the highest median income and yet has the 4th lowest attorney registration fee in the country (\$140) ranking higher than only Wisconsin, Indiana and Tennessee. The average attorney registration fee among the 50 states is \$231. Attorney registration fees range from \$100 in Tennessee to \$560 in Connecticut.

Other Solutions. Many states have turned to additional revenue sources to overcome declining funds for legal services. Other solutions include bar dues checkoffs (to encourage attorneys to make voluntary contributions when paying bar dues), *pro hac vice* fees and *cy pres* awards. The Maryland Bar Foundation generates approximately \$26,000 per year from a voluntary contribution checkoff on the Maryland State Bar Association’s dues invoice. Maryland’s current *pro hac vice* fee is \$25. The money does not go to legal services. Maryland admits 800 to 1000 attorneys *pro hac vice* per year. A \$200 increase in the fee would yield approximately \$200,000. *Cy pres* awards can be

lucrative for the legal services community when the awards are directed to them, although the awards are, by nature, unpredictable. Efforts to direct *cy pres* awards to one organization (MLSC, for example) might simply redirect funds that would otherwise go to another organization within the State's legal services community. Each of these sources might be more effectively harnessed to benefit the legal services delivery system, but none is likely to generate sufficient income to overcome the State's current deficit.

Interim Recommendations

Access to legal help and representation permits Marylanders to enforce their rights under the law. When citizens are empowered to enforce the law, democracy is strengthened and the State's citizens have access to the benefits the law was designed to provide. Equal access is more critical today as Maryland residents face job loss, declining incomes, foreclosure and eviction. Access to justice is a critical foundation of a just and civil society. The State has a vital interest in ensuring all Maryland citizens get legal help when needed.

The Maryland Access to Justice Commission makes the following interim recommendations to address the critical shortage of funding for civil legal services in the State:

RECOMMENDATION 4

Increase the filing fee surcharge for all civil case types by a reasonable amount and dedicate the resulting revenue to civil legal services.²

RECOMMENDATION 5

When economic circumstances make this option more feasible, the Maryland General Assembly should provide a regular appropriation from the State's General Funds to support civil legal services.

² This recommendation was adopted after a vote by the Commission, with one nay vote from the Maryland State Bar Association's (MSBA) representative to the Commission, Kathy Kelly Howard, Esq. The MSBA requested the Commission defer its decision regarding this recommendation. That request was declined. However, the Commission will continue to work with and consult with the MSBA Board of Governors on this matter.

RECOMMENDATION 6

Increase the attorney registration fee collected by the Client Protection Fund and dedicate the resulting revenue to civil legal services.³

³ This recommendation was adopted after a vote by the Commission, with one abstention and two nays, including a nay vote from the MSBA's representative to the Commission, Kathy Kelly Howard, Esq. The MSBA opposes this recommendation because it believes that the funding of legal services is a societal responsibility and not solely the responsibility of Maryland attorneys, and that increasing the registration fee may negatively impact the efforts of lawyers to devote more time to *pro bono* activities. It is the MSBA's position that funding for civil legal services should be accomplished through the general State appropriation process.

Maryland Access to Justice Commission



CRITICAL BARRIERS

This section of the report includes recommendations which address critical barriers faced by Marylanders seeking to use the courts, get legal help or otherwise solve a legal problem.

Addressing Critical Barriers

Many Marylanders face barriers in courts or when attempting to solve a legal problem. These barriers include:

- Ability
- Age – Seniors
- Age – Youth
- Court Practices and Structure
- Cultural
- Domestic Violence
- Homelessness
- Immigration Status
- Incarceration
- Language & Literacy
- Limitations of the Legal Services Community
- Poverty
- Public Awareness
- Sex, Sexual Orientation and Gender Identity

The Commission continues to identify issues associated with each barrier, and efforts are underway in the courts and among the legal services community and other service providers to address those issues.

The Commission considered it essential to hear directly from those who encounter these critical barriers. The Commission planned a series of “listening events” designed to permit the Commission and its committees to hear from those affected by these and other barriers.

Tell Us What You Think: Access to Justice Listening Events. A series of Access to Justice Listening Events have been planned, designed to serve the full Maryland Access to Justice Commission. Over 400 stakeholder organizations were invited. These organizations advocate for or otherwise serve persons in critical populations across the State. Stakeholders were invited to bring clients, if appropriate, who might be able to “tell their story”

to the Commission. Members of the Commission, its committees, judges, clerks, and court personnel have been invited to participate as “listeners.” The events are open to the public and invited stakeholders, as well as members of the public, may present verbal testimony.

The Commission has invited participants to submit written testimony. Written testimony may be mailed or faxed to the Commission.

Events have been scheduled in the following locations on the dates indicated:

June 23, 2009	Sheppard Pratt Conference Center, Baltimore
July 28, 2009	University of Maryland, College Park
September 22, 2009	Allegheny College, Cumberland
October 27, 2009	Chesapeake College, Wye Mills
November 24, 2009	Wicomico Co. Public Library, Salisbury
December 15, 2009	Southern Md. Higher Education Center, California
January 19, 2010	Langley Park Community Center, Hyattsville
February 23, 2010	Executive Office Building, Rockville
March 23, 2010	Our Daily Bread, Baltimore
April 20, 2010	Court of Appeals, Annapolis

A Spanish-language and American Sign Language (ASL) interpreter is provided for each event. Additional interpreters and special accommodations are available upon request. Security is also provided.

The Judiciary’s Office of Communications & Public Affairs is producing an audio recording of each event, videotaped highlights, photos, and select videotaped interviews with some of the participants. The Commission and its committees will glean insights from the testimony provided and develop recommendations from what is learned.

Thus far, the Commission has held the first four Listening Events. Chief Judge Robert M. Bell attended several of those events, along with members of the Commission, committee members, judges, clerks and court staff. At the Sheppard Pratt hearing, participants heard from nine speakers. At the second

event, held at the University of Maryland, College Park, over 45 listeners heard testimony from 21 individuals. At the third event in Cumberland, 17 listeners heard from eight speakers.

The Commission will generate recommendations to address the barriers identified above, and others that emerge from the testimony provided. In the interim, the Commission makes the following recommendations, based on some of the input received to date:

RECOMMENDATION 7

The Judiciary, legal services providers and the People’s Law Library should ensure documents and web-based materials are posted in a format compatible with screen-reading software for the blind.

RECOMMENDATION 8

The Judiciary, legal services providers and the People’s Law Library should work with organizations serving persons with disabilities to obtain technical assistance to ensure web-based tools and resources are accessible.

RECOMMENDATION 9

Make renovations to render courthouses or facilities where court services and legal services are provided more accessible to persons with disabilities.

RECOMMENDATION 10

Provide online maps of accessible entrances and accessible parking for court, commissioner and service provider facilities.

RECOMMENDATION 11

Provide training for judges, clerks and court staff on the needs and expectations of persons with physical and mental disabilities.

RECOMMENDATION 12

Provide training to judges, masters and attorneys on the recently enacted House Bill 689/2009 (2009 MD. Laws 568) entitled, “CINA, Guardianship, Adoption, Custody, and Visitation - Disability of Parent, Guardian, Custodian, or Party,” by including this in the Family Law Curriculum of the Judicial Institute and by

offering trainings through MICPEL to Maryland lawyers. The new law precludes courts from considering the disability of a parent in making child welfare and child custody determinations unless the disability affects the parent's ability to give the child proper care and attention.

RECOMMENDATION 13

Provide additional outreach to seniors living in nursing homes or assisted living facilities about legal information and legal services. Large print handouts and wall posters would be valuable. Legal services providers should consider providing relevant services on-site. Offer training on legal resources to the nursing home and assisted living advocates who are required to be on-site in each facility. Training may be offered through the state advocates at the Maryland Dept. of Aging.

RECOMMENDATION 14

Increase the use of alternative dispute resolution training in adult guardianship cases, issues involving family caregivers, and other matters affecting seniors.

RECOMMENDATION 15

Use donated computers to create legal information and outreach sites in nursing homes, assisted living facilities and senior centers, and train seniors in their use.

RECOMMENDATION 16

Provide additional funding for Court Appointed Special Advocates (CASAs) for children in foster care.

RECOMMENDATION 17

Increase the use of ADR in CINA and TPR cases.

RECOMMENDATION 18

Create a program model to provide school-based advocacy for youth with educational issues and needs.

RECOMMENDATION 19

Provide one judge/one family in family and juvenile cases.

RECOMMENDATION 20

Provide information about public transportation routes to courts, commissioner locations and service providers online, at clerk's offices, commissioner offices and in police stations and support efforts to create additional resources to ensure adequate public transportation and parking is available for all court and service locations.

RECOMMENDATION 21

Consider providing after-hours commissioners in more locations and in more convenient, less intimidating spaces to make it easier for victims to seek interim protective orders or to transact other court business.

RECOMMENDATION 22

Consider permitting victims to appear for the temporary protective order hearing in a location reasonably close to where they obtained an interim order.

RECOMMENDATION 23

Avoid sending victims to areas of the jurisdiction which may be difficult to reach by public transportation.

RECOMMENDATION 24

Judges should provide flexibility to victims seeking protection who may not appear precisely on time.

RECOMMENDATION 25

Support and expand efforts by service providers or bilingual government advocates to offer outreach and educational information to the Limited English Proficiency (LEP) population.

RECOMMENDATION 26

Explore lower-cost ways for the incarcerated to communicate with their counsel.

RECOMMENDATION 27

The State should provide increased funding for civil legal services for low and moderate income Marylanders.

RECOMMENDATION 28

Courts should consider scheduling matters requiring Spanish court interpreters on certain dates to permit efficiency of court time, interpreter time, and service to those with limited English proficiency.

RECOMMENDATION 29

Rotate interpreters to ensure interpreters remain engaged in the process of interpreting for the court.

RECOMMENDATION 30

Interpreters should be contacted at least five days prior to assignment to ensure availability.

RECOMMENDATION 31

Raise the current court interpreter fees to stay competitive.

RECOMMENDATION 32

Hire a full-time Spanish translator who will be part of the Court Interpreter Program team to work on translating forms, websites and any written materials for the courts on a regular basis.

RECOMMENDATION 33

For languages other than Spanish, the AOC should consider contracting a translation company that will provide translations of essential court documents, glossaries and websites on a regular basis.

RECOMMENDATION 34

The Court Interpreter Program can offer assistance in developing a protocol for translation projects and identifying vendors to provide on-going translation of court materials and glossaries in languages other than Spanish.

RECOMMENDATION 35

Review all forms, written instructions and web-based materials to ensure they are simple, comprehensible and written in clear, understandable English.

RECOMMENDATION 36

Promote the provision of sliding fee civil legal aid services to persons above the MLSC guidelines.

RECOMMENDATION 37

Continue to promote the development and provision of “unbundled” legal services to the low- and moderate income population.

RECOMMENDATION 38

Have Maryland legal services programs collect and report data to MLSC on persons declined service or provided less than needed service because of inadequate resources, or because the need is not included in the program’s priorities, or for reasons other than income eligibility. Have the programs guide unserved or underserved persons how to register grievances about the lack of availability of legal services with MLSC or some other organization.

RECOMMENDATION 39

Organizations serving victims of crime or abuse, local domestic violence coordinating councils, and statewide networks can play a role in enhancing public awareness or in providing legal services.

RECOMMENDATION 40

Increase public education, information and outreach to inform the public, and especially hard-to-reach groups such as older persons, infirm aged, institutionalized aged, disabled persons, the homeless, and non-English speaking populations.

RECOMMENDATION 41

Increase education and outreach efforts by government and private service providers, networks, and coordinating councils.

Maryland Access to Justice Commission



DEFINITIONS & STANDARDS

This section of the report reflects on the Commission's work to date to develop a shared definition of "access to justice" for Maryland, and standards by which to measure the Commission's impact.

Definitions & Standards

The Definitions & Standards Committee held its initial meeting in February, 2009. The Committee adopted a two-pronged objective to:

1. define “access to justice;” and
2. identify benchmarks and measurements to guide the Commission in fulfilling its goal of promoting access to justice.

To undertake its work, the Committee began by reviewing the various performance standards used by the Judiciary and its justice system partners, and the types of data currently available in the State, that might form the basis for measuring progress on access to justice. The Committee also reviewed model plans developed by the ABA and other state access to justice commissions, as a model for a future work product.

Finally, the Committee planned and hosted a meeting of the Commission’s Executive Team which included the Commission’s chair and vice-chair, and the chairs of the various committees. The Definitions & Standards Committee obtained a facilitator, Lou Gieszl, of the Maryland Mediation & Conflict Resolution Office (MACRO), to assist with the meeting. In preparation for the meeting, the Definitions & Standards Committee asked each committee to complete a questionnaire. In completing the questionnaire, committees were to summarize their goals, progress and products to date, and to reflect on their vision of “access to justice” in the context of the issues they were examining.

The Executive Team met, along with the Definitions & Standards Committee, on June 9, 2009. At that meeting, participants:

1. Reviewed four key legal needs studies completed in Maryland to date. This was undertaken to ensure the Commission can begin building on the work that has come before, and to permit the Commission to undertake its work without replicating the research and analysis that had been done by others.
2. Discussed the role of the Commission and various strategies to ensure effective group decision-making.

3. Discussed the perceptions of “access to justice” among the various committees. A summary of the discussion of defining “access to justice” is included as Appendix B.

The Definitions & Standards Committee will continue its work in the coming months to guide the Commission in crafting a unified vision of “access to justice” and in detailing benchmarks to be used in measuring progress towards achieving that goal.

Maryland Access to Justice Commission



PUBLIC EDUCATION

This section of the report covers efforts to promote enhanced public awareness of the civil justice system, the needs of those who use the civil justice system, and the critical role access to justice plays in preserving a just and civil society.

Public Education

The Maryland Access to Justice Commission created a Public Education Committee to identify and implement changes to promote enhanced public awareness of the civil justice system, the needs of those who use the civil justice system, and the critical role access to the civil justice system plays in preserving a just and civil society. The Committee has been meeting to develop a public education strategy for the Commission.

Current Efforts in Maryland

The Committee has explored current efforts in the State to enrich the public's understanding of the civil justice system and how to solve legal problems. These efforts include:

- The work of the Maryland State Bar Association (MSBA) to educate the public and increase public awareness of the legal profession and the law. This includes the MSBA's longstanding and very successful Citizen Law Related Education Project (CLREP) which hosts a High School Mock Trial Program each year, as well as teacher institutes designed to help educators teach the law in Maryland classrooms. Other MSBA efforts include Law Links, or programs in which law firms host high school interns, brochures, a Speakers' Bureau, Bench-Bar conference, the *Bar Bulletin* and the *Maryland Bar Journal*.
- The American Bar Association (ABA)'s promotion of Law Day activities each year, and the national ABA Day in Congress, in which ABA members, including Maryland attorneys, advocate for funding for legal services with Congressional delegations.
- The People's Law Library, Maryland's legal content website, managed by the State Law Library. The People's Law Library provides online access to legal information, as well as information and links on how to obtain a private or public interest lawyer, and where to go for additional information, forms and resources.

Critical Issue: The Funding Crisis for Legal Services

The Public Education Committee has become aware that one critical issue warrants the immediate attention of the Commission, and should be a primary focus of any public education campaign – i.e., the critical shortage of funding for civil legal services in Maryland.

➔ **Maryland is facing a significant decline in funding for civil legal services.**

Maryland residents are facing job loss, declining income, foreclosure and eviction. These strains may lead to other collateral disputes, including increased tension with family members or neighbors, and even domestic violence. At the same time that the legal needs of Marylanders are increasing, Maryland faces the most significant funding crisis for legal services in decades.

➔ **IOLTA income was down 49% for FY2009 and is projected to be down an additional 41% for FY2010.**

One primary source of funding for legal services in our State is the Interest On Lawyer Trust Account (IOLTA) program. These funds are administered by the Maryland Legal Services Corporation (MLSC), which makes grants to 35 legal services organizations serving Maryland residents. Due to the economic crisis and unprecedented low interest rates, IOLTA income fell far short of the original income projections for Fiscal Year 2009 (FY09) (July 1, 2008 – June 30, 2009), generating approximately 49% less revenue than the prior year. Looking ahead, unless interest rates improve in the short term, the State will experience an additional 41% decrease in IOLTA revenue in the current fiscal year. The total loss in IOLTA revenue will exceed 70% -- from \$6.7 million in FY08 to an estimated \$2 million in FY10.

➔ **Most legal organizations received a 20% cut in grant funding from MLSC for the coming fiscal year, FY2010.**

Because of this decline in funding, MLSC has eliminated one-time grants, and most challenge grants, and has cut core operating grants to most providers by approximately 20%, effective July 1, 2009. More drastic cuts are anticipated for the following fiscal year. MLSC made grants totaling \$15 million in FY2009, awarding only \$11.7 million in grants for FY2010. MLSC expects a \$5 million shortfall in FY2011 as compared to FY2009, before the economic downturn began.

Public Education Priorities

In light of this crisis for civil legal services, the Public Education Committee plans to develop a public education campaign with two primary messages:

1. To promote knowledge about the critical shortage of funding for civil legal services in Maryland; and
2. To enhance awareness about the resources currently available to Marylanders who have a legal problem or who are seeking to use the courts effectively.

Recommendation

The Commission, through its Public Education Committee, plans to continue its work to develop a comprehensive public education plan. In the interim, the Commission makes the following recommendation:

RECOMMENDATION 42

The Judiciary and its justice system partners should collaborate with the Commission to plan and implement a Maryland Access to Justice Day at the Maryland General Assembly during a future Legislative Session.

Several state Access to Justice Commissions have planned targeted events to educate legislators and advocate for increased support and resources for civil legal services. A Maryland Access to Justice Day would be an opportunity for a

select group of Commission members and bar leaders to meet with key legislators to present a clearly defined message. Many legislators do not understand fully how the civil justice system operates and the critical role legal services providers play in rendering that system accessible to all. A small group of selected participants would meet in Annapolis with key legislators to raise awareness about how civil legal services are funded in the state, and to advocate for stable and sufficient resources. As more and more Marylanders face home eviction or foreclosure and slip into poverty, there is much the State can do to protect access to justice, and through those efforts to ensure Marylanders can benefit from the full range of protections the law affords.

The Maryland Access to Justice Commission would work with the Judiciary's Government Liaison to identify key legislators and plan a targeted approach.

Due to the immediate fiscal crisis in the State, the Committee recommends that the Maryland Access to Justice Day be launched during a future Legislative Session, to be planned with the Judiciary's Office of Government Relations. This type of event could be a regular, annual opportunity to keep the ongoing needs of the civil legal services system before the General Assembly.

Maryland Access to Justice Commission



SAFETY, ACCESSIBILITY & CONVENIENCE

In this section, the Commission makes a number of recommendations to improve the safety, accessibility & convenience of the Maryland courts and other locations.

Safety, Accessibility & Convenience

Through its Safety, Accessibility & Convenience Committee, the Maryland Access to Justice Commission sought to identify changes to ensure that Maryland courts are safe, accessible and convenient for all court users. Committee members began by identifying a broad range of issues that are often identified by court users. The Committee also spent some time brainstorming remedies for some of these issues.

The Commission has identified the following improvements to enhance the safety, accessibility and convenience of the Maryland courts. The Commission recognizes that many would require additional resources and thus implementation depends upon the availability of additional resources.

Safety

RECOMMENDATION 43

Courts should develop, in coordination with relevant stakeholders, security protocols to assist at-risk individuals while on court premises. Train staff in the protocol.

RECOMMENDATION 44

Court facilities should have adequate lighting in parking lots.

Accessibility

RECOMMENDATION 45

Post or provide information based on the permanent layout of the building at all court locations to guide court users in finding their way. These should be provided in the building only, not on websites or in published materials, for security purposes. These might include:

- a. Signs
- b. Maps (provided on location only, not online or in publications)
- c. Arrows
- d. Icon-based signage and location cues (ADA compliant)
- e. Information desks and greeters – consider trained volunteers

RECOMMENDATION 46

Provide information online including:

- a. Maps of accessible entrances
- b. Maps of accessible parking
- c. Exterior building photos – with equivalent language (tag) for the visually impaired.

RECOMMENDATION 47

The Judiciary should meet with technical consultants who can ensure the accessibility of web materials.

- a. Redesign websites to comply with Dept. of Justice ADA Best Practices Toolkit for state and local governments.

RECOMMENDATION 48

Provide training for court personnel on the following topics:

- a. Customer service
- b. Legal advice vs. information
- c. Judiciary structure, division of authority, and basic information
- d. ADA requirements and concerns including disability awareness
- e. Frequently asked questions

RECOMMENDATION 49

Provide accessible parking closer to court facilities.

RECOMMENDATION 50

Conduct an accessibility audit of all the court locations and commissioner stations (A similar audit was conducted about 3 years ago).

- a. Fund and implement improvements.
- b. Provide for citizen review and participation, especially eliciting insights from persons with disabilities.

RECOMMENDATION 51

Provide information to court users on the distinctions between the District and Circuit Court.

RECOMMENDATION 52

Have the Office of Communications and Public Affairs incorporate accessible parking maps, Google directions links, and transit directions into the court location information provided online. Also distribute the materials to local courts for posting on local court websites.

RECOMMENDATION 53

Study the further use of court-based business centers with public computers, fax, and phone to aid all court users.

Convenience

RECOMMENDATION 54

Prepare web-based information on "What to Expect." A notice directing users to this information can be mailed with the summons/notice to enable court users to go to the site for further information.

RECOMMENDATION 55

Differentiate the information provided online by location.

RECOMMENDATION 56

Also distribute the same material via hardcopy and provide through law libraries and public libraries.

RECOMMENDATION 57

Provide phone-based information that users can call in to hear.

RECOMMENDATION 58

Host user focus groups to review the Judiciary website and suggest how it might be improved.

Maryland Access to Justice Commission



SELF-REPRESENTED LITIGANTS

In this section, the Commission makes recommendations that would have some impact on those who are currently self-represented. These include ways to:

- Permit lawyers to provide *a la carte* services to individuals who may not be able to engage them for the full representation.
- Support the use of court-based self-help centers.
- Gather additional insights from the self-represented themselves.

Limited Scope Representation

The Maryland Access to Justice Commission reviewed a broad range of materials on limited scope representation in an effort to explore this practice model as one which may create opportunities for more low- and moderate-income Marylanders to afford counsel when needed. Through its Discrete Task Subcommittee, the Commission has prepared a white paper, included in this report as Appendix C, summarizing the current Rules in Maryland and steps the Judiciary, the Bar and others in Maryland might take to advance the practice.

RECOMMENDATION 59

The Maryland Access to Justice Commission supports and endorses the practice of limited scope representation and provides the white paper in Appendix C in an effort to encourage Maryland attorneys to explore ways to expand their practice to ethically serve those who might not otherwise be able to afford legal services.

The white paper suggests a number of innovations that might further enhance the ability of attorneys to engage in limited scope practice effectively. The Commission intends to continue its work in this area by developing suggested Rules, forms and policies the Judiciary and the Bar may want to consider.

Public Input Regarding the Self-Represented

The Maryland Access to Justice Commission recognizes that in order to respond effectively to the needs of the self-represented, Maryland courts and legal service providers need additional information about those who appear in court without counsel.

RECOMMENDATION 60

The Commission recommends that the Maryland Judiciary collect data on an on-going basis from self-represented litigants, to help the court determine the needs of these individuals and respond appropriately.

The Subcommittee has developed a survey, included in Appendix D, for use by the courts, and recommends it be distributed through a variety of mechanisms, including the following:

- Make the surveys available at the Clerk's Office counter
- Distribute through Self-Help Centers
- Distribute to litigants
- Make the surveys available on court publication racks
- Make the surveys available at court information desks
- Post the survey on Courtnet so court staff can download and print
- Post the survey on the Judiciary website, on the main page and include a link to the form on the website of the Maryland Access to Justice Commission, on the Judiciary Forms page, and on the People's Law Library (www.peoples-law.org).

Hard copy surveys should be collected at drop-off boxes placed in Clerk's Offices and Self-Help Centers.

The survey should be translated and made available in additional languages, including Spanish.

The subcommittee recommends the survey be distributed timely to aid the Commission in developing meaningful recommendations to address issues arising from self-representation in the courts.

Self-Help Centers

Self-Help Centers Today

Most Circuit Courts in Maryland offer Family Law Self-Help Centers, walk-in services where self-represented litigants can obtain forms and receive assistance in representing themselves in a family case. In smaller jurisdictions, the service may be available on a part-time basis, a few hours per week. Some larger jurisdictions offer full-time or nearly full-time services. In most courts, the service is provided by attorneys. Most courts offer the service by contracting with a local legal service provider or private attorney. Some courts have court-employed attorneys providing the service and a few offer or enhance the service by using *pro bono* attorneys. In most instances, the service is provided on-site in the courthouse. In some jurisdictions the program is offered off-site in community based locations and, in some instances users can visit the program after business hours. The Family Law Self-Help Centers serve between 35,000 and 40,000 persons per year. The Judiciary developed a document entitled, *Best Practices for Programs to Assist Self-Represented Litigants in Family Cases*, to guide courts in managing these programs.

District Court Self-Help Center Pilot Project

With the guidance and assistance of the Commission, the District Court of Maryland is preparing to launch the first District Court-based self-help center at the District Court for Anne Arundel County in Glen Burnie, Maryland. Most of the case types handled by the District Court are those in which the self-represented are most likely to appear -- landlord-tenant matters, small claims, debtor/creditor actions, domestic violence and traffic violations. These are cases where courts are increasingly witnessing the impact of the current economic downturn. The District Court of Maryland provides comprehensive online forms and an informative website, but until now, as offered no direct assistance to the self-represented.

In launching a demonstration project in one of the State's moderately large jurisdictions, the Judiciary and the Commission hope to:

- Evaluate the ability of the District Court Self-Help Center to: (i) enhance the knowledge and understanding of the court users appearing without counsel; (ii) improve the ability of the self-represented to navigate the District Court; and (iii) increase the ability of self-represented court users to take advantage of the protections the law provides as they increasingly face economic hardship, loss of income, and loss of homes.
- Test the applicability of the self-help center model in a much higher volume, limited jurisdiction trial court;
- Identify key resources that can be leveraged for use statewide with the use of technology, curricula or centralized service delivery some of which will have applicability for Circuit Courts as well; and
- Develop best practices and standards to be followed in replicating the pilot project to other District Court sites.

In developing the pilot, the District Court will follow the *Best Practices for Programs to Assist Self-Represented Litigants in Family Matters*, referenced above. In addition, the District Court has indicated it will implement many of the recommendations in *Opening Help Centers for the Self-Represented in Courts and Communities*,¹ especially in integrating technology into the delivery of services to the public.

The Maryland Judiciary issued a Request for Proposal and, after a competitive bidding process, selected the Legal Aid Bureau of Maryland to operate the Center. The Center will focus primarily on providing assistance in landlord-tenant, small claims and domestic violence matters, the latter primarily through coordination with the on-site legal services provided by the YWCA of Annapolis and Anne Arundel County. Users will have access to the following services:

- Confirmation of **case status** and **scheduling information**;
- Information about and referrals to the court's **alternative dispute resolution services**;

¹ Wayne Moore, Bonnie Hough, Richard Zorza, Sherna Deamer, Allison McDermott and Gigi Amateau, *OPENING HELP CENTERS FOR THE SELF-REPRESENTED IN COURTS AND COMMUNITIES*, (April 2006).

- **Assistance completing court forms;**
- **Basic legal assistance** to guide self-represented litigants preparing for negotiations or trial.
- **Information about legal rights and consequences** to ensure self-represented litigants are fully informed before proceeding with their case.
- **Referrals** to legal services providers and the private Bar when appropriate.
- **Referrals** to providers of domestic violence services when appropriate.
- Information about and referrals to the state's network of **domestic violence legal services, especially the on-site program operated by the YWCA of Annapolis and Anne Arundel County.**
- **Classes** presented on a schedule to be decided in consultation with the District Court, to guide larger number of litigants in key case types.
- Development of **orientation materials** to guide litigants in key case types.
- Intake interviewing and triaging.
- Assistance in using technological resources including public access computers.
- Referrals for other services, including alternative dispute resolution, assistance for victims of domestic violence, and other forms of legal help.
- Assistance selecting and completing court forms.
- Basic procedural information.
- Basic legal advice and assistance.

The Center will be staffed by two-full-time attorneys, a paralegal and an administrative assistant. Space renovations have been completed at the District Court in Glen Burnie, equipment has been ordered and in some cases received, and at the time of this writing, the Center was on target to open its doors for service during the Fall of 2009.

Members of the Self-Help Center Subcommittee, of the Commission's Self-Represented Litigant Committee, will serve on the project's Advisory Team which will also include Chief Judge Clyburn, Judge John Peter McKenna, the administrative judge of the District Court for Anne Arundel County, Joseph Rosenthal, Chief Clerk of the District Court, key staff at the Glen Burnie courthouse and at District Court Headquarters, and representatives from the Judiciary's Office of Communications & Public Affairs as well as the Court Research and Development Department. The Advisory Team will monitor and provide guidance to the project, and will also provide guidance for a project evaluation to be conducted by the Court Research and Development Department.

Self-Help Services for Accelerated Small Claims Dockets

During Fiscal Year 2010, the Maryland Judiciary hopes to issue a Request for Proposal and identify vendors to provide limited self-help services for litigants appearing without counsel for accelerated small claims dockets currently operating in District Court locations in Baltimore City, Montgomery and Prince George's Counties. Debtors are required to appear at court for these accelerated dockets, often knowing little about court procedures or their rights or obligations under the law. The District Court of Maryland will offer self-help services at the courthouse for those with questions about their case. These services would be provided in the courthouse on the day these dockets are heard. The Self-Help Center Subcommittee will monitor this program and participate in evaluating its efficacy and replicability.

Consolidated Service Centers for Victims of Domestic Violence

One emerging practice in the State that holds promise for improving access to justice is the consolidation in one location of services and resources to support victims of domestic violence. Examples include the integrated domestic violence court that operates at the District Court location on North Avenue in Baltimore City, as well as the new Family Justice Center in Montgomery County.

At the integrated domestic violence court, for example, victims can obtain assistance in pursuing criminal as well as civil remedies without having to visit multiple locations. Victims can meet there with prosecutors and victim services coordinators from the State's Attorney's Office to discuss criminal charges; they can file charges with District Court commissioners. Victims can also file a petition for a civil protective order. Co-located service providers in the building provide immediate access to the ancillary services victims need to effectively navigate both the criminal and the civil justice systems. In Baltimore City, the House of Ruth operates a Protective Order Advocacy and Representation Project (POARP), offering to victims safety planning, court accompaniment services, legal advice and representation, and referrals to shelters and other services.

Integrated domestic violence courts also enhance abuser accountability by improving communication between the entities involved in enforcing civil and criminal orders, and by providing immediate access to services, information and the courts.

A Long Range Vision for Self-Help Centers in Maryland

The Maryland Access to Justice Commission will use insights gained from these projects, and from the State's experience with Family Law Self-Help Centers, to develop a broader vision for the role self-help centers might play in helping courts address the needs of, and deal with, those who appear without counsel. Such a long-range plan will include a number elements including:

1. Distribution and scope of self-help centers across the State
2. Funding source for self-help centers
3. Program policies and standards
4. Written materials for the self-represented
5. Self-help center promotional materials and outreach
6. Orientation protocols, materials and media

7. **Course curricula and training materials on substantive legal topics**
8. **Capital planning**
9. **Professional development for self-help center providers**

Recommendations

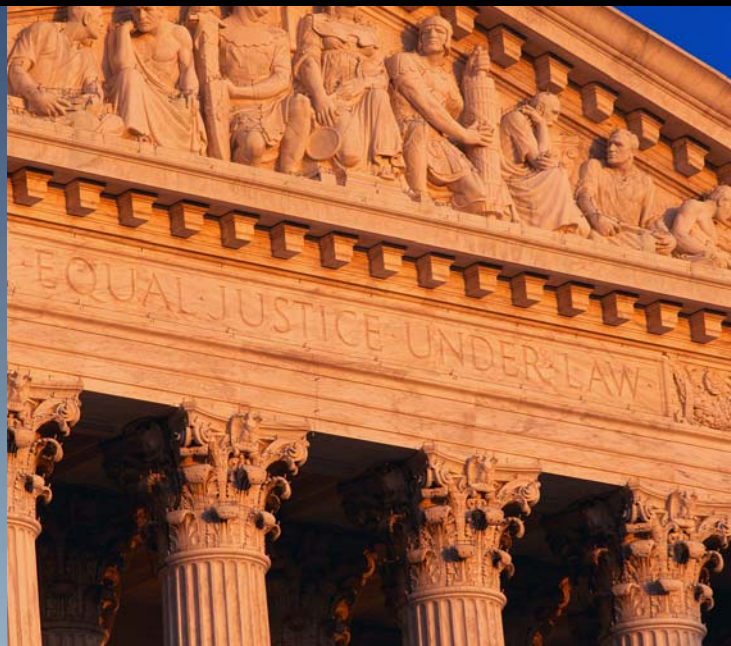
RECOMMENDATION 61

The State and the Maryland Judiciary should provide sufficient and stable funding to permit the implementation and evaluation of the District Court Self-Help Center in Glen Burnie, and self-help services to complement the accelerated small claims dockets in Baltimore City, Montgomery County and Prince George's County.

RECOMMENDATION 62

The Maryland Judiciary and its justice system partners should collaborate to consolidate all services in the courthouse for victims of domestic violence, to improve access for victims to both civil and criminal remedies, to enhance access to services including legal representation, and to strengthen offender accountability.

Maryland Access to Justice Commission



CONCLUSION

Conclusion

The Maryland Access to Justice Commission urges the Maryland Judiciary, the Maryland State Bar Association, the legal services community, the Executive and Legislative Branches to collaborate to implement the recommendations contained in this report. Together we form a natural constituency that is uniquely equipped to understand and advocate for a healthy and vibrant civil justice system in our State. Few Marylanders realize the importance of the State's civil justice system to the preservation of their rights and well-being. It is incumbent upon us – those of us who work within that system, who realize its complexities – to work together to expand resources for the civil legal services delivery system, and to strengthen the mechanisms that make that system function effectively for all.

Maryland Access to Justice Commission



APPENDICES

A. Fee-Shifting Statutes – A
Judicial Institute Course Proposal

B. Access to Justice – Coming
Together Around a Shared
Definition

C. Limited Scope Representation
in Maryland – A White Paper

D. Self-Represented Court User
Survey

Maryland Access to Justice Commission

The Judicial Role in Maryland Fee-Shifting Statutes A Judicial Institute Course Proposal



IN THIS PROPOSAL:

- Statement of Need
- Course Summary
- Recommended Coordinator
- Suggested Faculty
- Timing
- Additional Information

Statement of Need

Fee-shifting statutes are part of an overall system designed to empower private citizens to enforce the law. This “private attorney general” scheme is intended to supplement government enforcement of the law. It is based on the recognition that government may not be able to enforce all provisions of every law that make up the complex regulatory scheme created to protect individual rights. Fee-shifting statutes are those laws which permit individuals who have prevailed in the courts to seek and obtain attorneys fees. Fee-shifting provisions have been built into a broad range of Maryland statutes including those governing:

- Wages and hours of employment
- Wage payment and collection
- Discrimination and civil rights
- Worker’s compensation
- Consumer protection
- Email fraud
- Whistleblowers

Fee-shifting provisions become especially important when the amount in controversy is relatively small. They are included in these key laws to ensure that individuals with small claims have an opportunity to enforce those claims, even when the returns might be too small for them to attract an attorney on a contingency fee basis.

Equally important is the access fee-shifting statutes provide to non-monetary relief. This has the potential to leverage modest individual claims into larger forms of relief likely to promote systemic change that may benefit many others.

When a low wage earner retains counsel to enforce a wage claim, the case may have great significance and urgency to that individual. Although the amount in controversy may be small, perhaps only a few hundred or a few thousand dollars, those funds may be what is needed to ensure the low wage earner can purchase food for their family, or pay rent and avoid eviction. In the absence of

fee-shifting statutes, the individual would be unable to afford an attorney to enforce the claim. The attorney would likely need to incur costs of thousands of dollars to enforce the claim. An attorney who knows he or she can obtain attorney's fees from the opposing party is more likely to take cases with merit. Fee-shifting statutes put the onus properly on those who act in contravention of the law or without just cause.

Fee-shifting statutes are designed not only to enhance access to the courts, but also to deter inappropriate conduct. The Maryland Access to Justice Commission proposes that the Judicial Institute provide a course on these critical statutes to enhance the understanding of judges about the critical role fee-shifting statutes play in enhancing the private enforcement of laws in Maryland, and to understand the role they as judges play in ensuring that the private attorney general system can function as intended to protect the rights of Marylanders.

Course Proposal

The Commission recommends the Judicial Institute develop a course with the following goals:

1. To educate judges on the key legal precedents, Maryland and federal, and identify critical differences between key Maryland fee-shifting statutes;
2. To demonstrate to judges whether and how to properly use the lodestar approach, including the case law factors for determining reasonableness of hours and rates and upward and downward adjustments;
3. To demonstrate the scope of the trial judge's discretion;
4. To alleviate concerns that every fee petition will necessarily spawn a separate round of collateral litigation;
5. To provide guidance on how to decide fees and issue a ruling that will survive appellate review; and
6. How to determine the prevailing party.

Recommended Coordinator

The Maryland Access to Justice Commission recommends that Judge Michael Mason of the Circuit Court for Montgomery County serve as the coordinator for a Judicial Institute program on fee-shifting statutes. Judge Mason currently serves as the Judge-in-Charge of the Business & Technology Judges in Maryland. He is familiar with fee-shifting provisions in Maryland law and was instrumental in bringing some procedural matters regarding fee-shifting statutes before the Rules Committee.

Suggested Faculty

The following individuals were recommended as potential faculty members for a course on fee-shifting statutes:

1. Hon. Paul Grimm, U.S. District Court for the District of Maryland
2. Andrew D. Freeman, Esq., Brown, Goldstein & Levy LLP
3. Hon. Michael Mason, Circuit Court for Montgomery Co.

Timing

The Maryland Access to Justice Commission recommends that a fee-shifting course be offered in Fall, 2011.

Additional Information

The members of the Fee-Shifting Subcommittee of the Access & Delivery of Legal Services Committee of the Commission are willing to provide additional information or serve as a resource for the Judicial Institute in planning a course.

Access to Justice in Maryland COMING TOGETHER AROUND A SHARED DEFINITION

What do we need to do to get the facts and laws before the judge?

How to make the system just for all people. Making the justice system meaningfully accessible for all people.

Individuals have an understanding of dispute resolution options and are able to make a decision about whether their case is appropriate for some form of ADR, and have access to the service. They can do this before initiating legal action, and regardless of representational status or ability to pay.

Community mediation centers can make a difference in enhancing access to justice, and have been underutilized.

The definition should be practical rather than theoretical – it needs to address what we can solve.

Low income persons have access to whatever resources they need to solve a legal problem or question.

When possible, the law can be implemented without lawyers (embedded law).

The courthouse is safe, accessible and convenient.

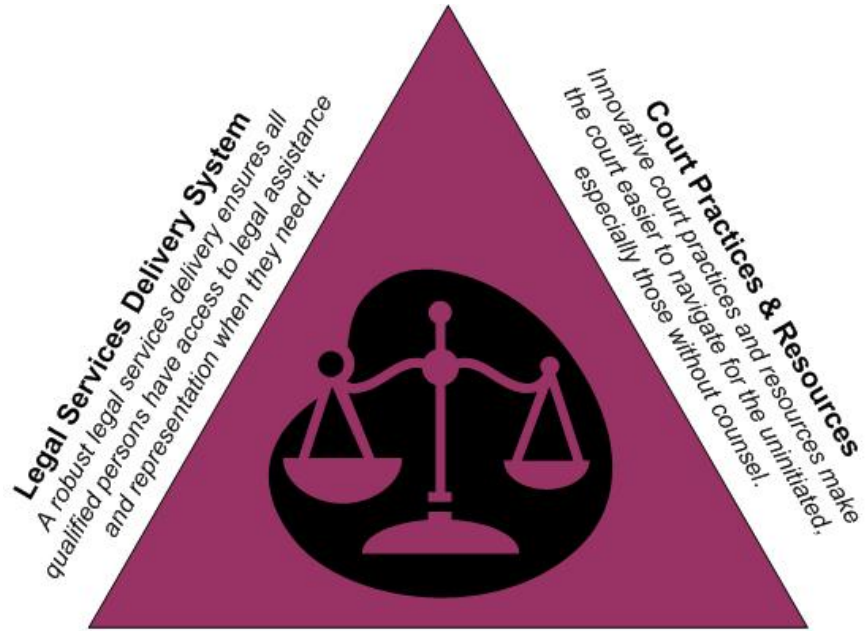
Every qualified person in the US, whether a citizen or not, will receive legal advice or representation to maximize the presentation of the merits of their claim before the tribunal.

Access to the courts and legal assistance regardless of ability, age, culture, gender, incarceration, income, language, literacy or sexuality.

All Marylanders have access to the services required to resolve any legal questions or disputes ranging from the provision of information, advice and appropriate referrals to full representation in litigation.

Access to the information and knowledge that permits Marylanders to benefit from the rights, protections, services and opportunities that the law provides.

All court users can effectively use the court and its services regardless of representational status.



Public Education

Public education efforts support the legal services delivery system and the courts, promoting access by promoting awareness.

LIMITED SCOPE REPRESENTATION IN MARYLAND
A White Paper of the Maryland Access to Justice Commission
September 2009

Limited Scope Not Quality

The idea of limited scope representation derives from the recognition that securing the assistance of legal counsel ought not be an all-or-nothing proposition. Ethical rules require attorneys to be zealous and thorough in their representation. Attorneys taking seriously their obligation to provide comprehensive representation are more hesitant to provide limited services. An unintended consequence has been limited access to legal help for those who cannot afford to engage an attorney for soup-to-nuts representation. In the last decade a number of practitioners, bar associations and courts have been experimenting with models of legal practice that permit attorneys to provide *a la carte* services to clients who want or need to limit their expenditures, and are able to effectively handle the other aspects of their case on their own. The terms “unbundling,” “discrete task representation,” and “limited scope representation” have been used to describe these practice models. For the purposes of this paper we will use the term “limited scope representation” as it tracks the language currently used in the Maryland Rules to refer to this type of practice.

“Limited scope representation” conveys an alternative mechanism for delivering high quality legal services to well-prepared clients. It means a reduction in scope only, not in quality. M. Sue Talia, a California practitioner who has written, trained and advocated extensively as a limited scope practitioner calls it, “...a partnership between lawyers and litigants, where private attorneys provide some, but not all, of the services contained in traditional full service representation.”¹ The ideal client is a savvy legal consumer who is capable of and prepared to handle many of the tasks that a lawyer and his or her team might perform in handling a case. The client and the lawyer together decide which tasks would be most appropriate for the lawyer to perform, and which the client will handle. Clients may elect to engage their attorney for limited services for a variety of reasons. Some clients may be unable to afford full representation; others may simply be worried that they cannot evaluate the full cost of representation at the outset and want to limit the costs. Other clients may want to retain control over the process and prefer to call upon the attorney for discrete, specific tasks. They may want direct access to the courts and the litigation process.

As in all professional relationships, limited scope representation works best when it is founded on clear and effective communication between the lawyer and the client. An attorney who offers limited services to his or her clients, will need to clearly define the relationship in a limited scope retainer agreement, and will need to provide *a la carte*

¹ M.SUE TALIA, ROADMAP FOR IMPLEMENTING A SUCCESSFUL UNBUNDLING PROGRAM (2005) *available at* <http://www.wsba.org/taliaspaper.pdf> (last visited July 7, 2009).

pricing so that the client can make effective decisions about when and how to engage the attorney. When the process is well-defined, it can be an excellent means to increase access to critical representation for those who might not otherwise be able to afford counsel.

This permits attorneys to take advantage of what Richard Susskind has called the “latent legal market.”² This is the idea that many people need legal help and would benefit from legal guidance but lack the resources or courage to seek help from lawyers.

Despite some early activity in Maryland,³ limited scope practice has not found much traction in the State. In a 2007 report, the Maryland Judiciary Work Group on Self-Representation in the Maryland Courts, chaired by Hon. Clayton Greene, Jr., recommended the Judiciary appoint a Bench-Bar committee to explore ways to support discrete task representation.⁴ In following up on that recommendation, the Maryland Access to Justice Commission has prepared this report to investigate the current rules climate in the State, and suggest reforms that might support lawyers willing to provide limited scope services.

The Rules Environment

Two Maryland court rules address issues of limited scope representation. The first was modified and the second added at the recommendation of the Select Committee to Study the Ethics 2000 Amendments to ABA Model Rules of Professional Conduct [hereinafter *Rowdowsky Committee*] appointed by the Court of Appeals in 2002.⁵

Rule 1.2. The first, MRPC Rule 1.2(c) provides that “a lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent.”⁶

Comment 6 to the rule provides that the terms may be limited by agreement with the client, or by the terms of the representation. The comment suggests limited scope representation may be appropriate where the “client has limited objectives for the representation.” The client and the lawyer may purposefully choose not to pursue certain litigation options or “means.” The comment suggests this may include options the client

² RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* 18 (2008).

³ In 2000 the Maryland Legal Assistance Network (MLAN), at that time a project of the Maryland Legal Services Corporation (MLSC), hosted a national conference on “unbundling.” The event was held in Baltimore, October 12-24, 2000. Materials are available at www.unbundledlaw.org (last visited July 7, 2009).

⁴ MARYLAND JUDICIARY WORK GROUP ON SELF-REPRESENTATION IN THE MARYLAND COURTS, *CLEARING A PATH TO JUSTICE* (August, 2007) 14 available at <http://www.mdcourts.gov/publications/pdfs/selfrepresentation0807.pdf> (last visited July 7, 2009).

⁵ REPORT OF THE SELECT COMMITTEE TO STUDY THE ETHICS 2000 AMENDMENTS TO ABA MODEL RULES OF PROFESSIONAL CONDUCT [hereinafter *RODOWSKY COMMITTEE*] (December 16, 2003) available at http://www.mdcourts.gov/publications/pdfs/lawyersropc_finalrept03.pdf (last visited July 7, 2009).

⁶ MD. LAWYERS’ R. OF PROF’L CONDUCT 1.2 (2009).

finds “too costly” or that the lawyer finds “repugnant or imprudent.”⁷ The reference to cost does seem to contemplate an *a la carte* approach to legal services when appropriate.

The modifications to the Rule and its comment suggest that the Rodowsky Committee, the Court of Appeals Standing Committee on Rules of Practice and Procedure (Rules Committee) and the Court of Appeals, itself, intended to support lawyers in expanding the manner in which they deliver services to their clients, especially those of limited means. The text of the Rule was altered to permit lawyers to “limit the scope” rather than “limit the objectives.” In response to public comments on the proposed changes, the Rodowsky Committee noted that they agreed “that limited representation can expand access to legal services,” although they declined to state the connection to access to justice more affirmatively in the comment, as they believed the comment provided sufficient background as proposed. Nevertheless, few in Maryland have overtly ventured into limited scope practice under the imprimatur of this rule.⁸

Rule 6.5. On the other hand, the practice of providing assistance to self-represented litigants, short of full representation, is a common practice in Maryland, promoted by the courts. Maryland Circuit Courts have operated Family Law Self-Help Centers in the Circuit Courts for over ten years. In these centers, which serve between 35,000 and 40,000 per year, persons without counsel can meet with an attorney to discuss the facts in their case, receive guidance on which forms to use, and receive basic procedural information and assistance in representing themselves.⁹ Circuit Courts operate these centers, in many instances, by contracting with local attorneys, firms or legal services providers. A few courts have hired attorneys and paralegals directly to operate the service in the courthouse. All Circuit Courts provide space, furnishings and equipment for the center.

The Court of Appeals adopted Rule 6.5 upon the Rodowsky’s Committee’s recommendation in 2005:

Rule 6.5. Nonprofit and court-annexed limited legal services programs.

- (a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:
 - (1) is subject to Rules 1.7 [Conflict of Interest: General Rule] and 1.9(a) [Duties to Former Clients] only if the lawyer knows that the representation of the client involves a conflict of interest; and

⁷ See Comment 6, MD. LAWYERS’ R. OF PROF’L CONDUCT 1.2 (2009).

⁸ See the Rodowsky Committee’s Response to Public Comment: Rule 1.2 in RODWOSKY COMMITTEE, *supra* at 341.

⁹ MARYLAND JUDICIARY, ADMINISTRATIVE OFFICE OF THE COURTS, DEPARTMENT OF FAMILY ADMINISTRATION, ANNUAL REPORT OF THE MARYLAND CIRCUIT COURT FAMILY DIVISIONS AND FAMILY SERVICES PROGRAMS (FISCAL YEAR 2006) 35-38 (2007).

- (2) is subject to Rule 1.10 [Imputation of Conflicts of Interest: General Rule] only if the lawyers know that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.
- (b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.¹⁰

Comment 1 specifically attaches this rule to self-help projects like those operated by the Maryland Circuit Courts.

The Rule is a practical one. It relaxes the normal conflict of interest rules for attorneys serving in high volume, brief advice programs, recognizing that it is impractical to expect attorneys to conduct a full conflicts check when they may see hundreds of clients a week for brief 15-minute consultations. Programs can serve a larger number of individuals if they reduce the amount of time spent conducting intake screening to root out conflicts. These programs typically do not retain client contact information, files or materials. Circuit Court Family Law Self-Help Centers, for example, collect demographic information about their clients, without identifying information. While Rule 6.5 permits attorneys to provide assistance without conducting a conflicts check, a conflict will attach if the attorney has actual knowledge of a conflict of interest.

Are These Rule Provisions Enough? Talia notes that “Explicit permission granted by rules is less important than the absence of a specific prohibition.”¹¹ She notes that states which have adopted Rules 6.5 and 1.2(c) from the ABA Model Rules should have an advantage. Twenty-nine states have adopted some version of Model Rule 1.2(c) – nine without alteration. Twenty-seven states have adopted some version of Model Rule 6.5 – nineteen, including Maryland, without alteration.

Maryland has a positive rules climate for limited scope representation. There are few impediments restricting attorneys who want to serve a broader range of clients who may, for financial, control, strategic or psychological reasons, be interested in engaging them for discrete tasks only.

Are Additional Rules Needed? Only a few states have enhanced Model Rule 1.2 with additional rules to address specific aspects of limited scope representation. The ABA Section of Litigation recommended a number of additional rules clarifications Maryland should consider in supporting limited scope representation.

- (1) Allow lawyers to make **limited appearances in courts and before administrative agencies**.¹² Maine and Washington State have both adopted rules that expressly permit attorneys to make limited appearances.¹³

¹⁰ MD. LAWYERS’ R. OF PROF’L CONDUCT 6.5 (2009).

¹¹ TALIA, *supra* at 6, n.2.

¹² AMERICAN BAR ASSOCIATION SECTION OF LITIGATION, HANDBOOK ON LIMITED SCOPE LEGAL ASSISTANCE: A REPORT OF THE MODEST MEANS TASK FORCE [hereinafter ABA, HANDBOOK]141 (2003).

- (2) Allow lawyers to **withdraw from representation** when they have completed the promised, limited representation, after giving the client notice and the opportunity to be heard if the client objects.¹⁴ California has adopted CA Rule 5.71 “Application to be relieved as counsel on completion of limited scope representation.”¹⁵
- (3) Clarify the rules governing **communications** between and among clients receiving limited representation, opposing parties who are represented, and limited and full-service lawyers so that all of the affected parties understand when they can communicate directly with one another and when they cannot.¹⁶ Other states and some local bar associations have weighed in on this issue. In an ethics opinion, the Los Angeles Bar Association found there was no provision in the rules precluding the lawyer from communicating with a partially represented party.¹⁷ Other states have said you have to communicate with the limited scope lawyer if you have knowledge of the limited representation.¹⁸ Still other states allow lawyer-to-party communication unless the limited scope lawyer notifies opposing counsel of the representation.¹⁹ This issue also arises when the lawyer **scripts** communications between their client and an opposing party who is represented. In its Handbook on Limited Scope Representation, the ABA Section on Litigation notes this would be prohibited if you were fully representing the person. Although clients are permitted to talk to one another, this type of advice should be very limited.²⁰
- (4) Allow lawyers to help otherwise *pro se* litigants to prepare pleadings, or allow lawyers to prepare those pleadings themselves (**ghostwriting**), **without requiring disclosure of the assistance**.²¹ California Rule 5.70 includes such a provision.²² Two states have adopted rules that counter the ABA recommendation by requiring disclosure.²³ Note that requiring disclosure could have a deleterious effect on the operations of court-based self-help centers which routinely assist self-represented litigants in preparing pleadings.

¹³ ME. BAR RULE 3.4(i)(2009) and WASH. C.R.L.J. 4.2 (2009), C.R.L.J. 11 (2009), C.R. 70.1 (2009) and C.R.L.J. 70.1 (2009).

¹⁴ ABA, HANDBOOK, *supra* at 141.

¹⁵ CAL. RULES OF COURT, Rule 5.71 (2009).

¹⁶ ABA, HANDBOOK, *supra* at 143.

¹⁷ L.A. County Bar Assoc. Prof'l Responsibility and Ethics Comm., Formal Op. No. 502 (November 4, 1999) available at <http://www.lacba.org/showpage.cfm?pageid=431> (last visited March 11, 2009).

¹⁸ ABA, HANDBOOK, *supra* at 108-109.

¹⁹ ABA, HANDBOOK, *supra* at 109.

²⁰ ABA, HANDBOOK, *supra* at 112.

²¹ ABA, HANDBOOK, *supra* at 144.

²² CAL. RULES OF COURT, Rule 5.70 (2009) provides “In a family law proceeding, an attorney who contracts with a client to draft or assist in drafting legal documents, but not to make an appearance in the case, is not required to disclose within the text of the document that he or she was involved in preparing the documents.”

²³ COLO. R. CIV. P. 11 (2009) and NEV. E.D.C.R. 5.28 (2008).

- (5) Allow an attorney who assists a litigant in preparing pleadings to rely on that person's representation of the facts, unless the attorney has reason to believe the representations are false or materially insufficient in which case the attorney should make an independent inquiry into the facts.²⁴ Washington State has crafted two rules which do precisely that.²⁵

The Ethics of Limited Scope Representation

Maryland Ethics Opinions. Three opinions issued by the Maryland State Bar Association's Committee on Ethics have some bearing on limited scope representation, although none directly enlighten the issue.

Maryland Ethics Docket No. 2007-19 addresses whether attorney-mediators can prepare legal documents for unrepresented litigants.²⁶ The opinion notes that while it is common for mediators to prepare a "term sheet or memorandum of understanding" to set forth the terms of the agreement, "[w]hen the task changes from memorializing the understanding to drafting legally binding documents, the mediator's role as scrivener changes to legal practitioner." This would constitute the practice of law and Rule 1.12 prohibits an attorney-mediator from representing any party to the mediation without the consent of all. This opinion seems to turn on the dual role played by the attorney-mediator. An attorney-mediator should not draft legally binding documents for the mediation clients. The opinion does not otherwise preclude an attorney from drafting legally binding documents for a client who has participated in mediation with a mediator other than him or herself.

Maryland Ethics Docket No. 2006-11 asks "Whether a State's Attorney Office that represents the child support enforcement agency may represent *pro se* defendants in filing a request for modification (reduction) of child support payments."²⁷ The Committee opines that it would be impermissible for the agency to advocate for a downward modification on behalf of otherwise unrepresented child support defendants.

Local child support enforcement offices engage attorneys to assist custodial parents in obtaining child support from non-custodial parents. Child support enforcement attorneys make clear to custodial parents that they represent the child support enforcement agency in seeking the best interest of the child. This message is reiterated verbally and in writing throughout the process. Custodial parents are required to sign a "Notice of Legal Representation" which states that the attorney's client is the agency and that the attorney does not represent either parent. As a condition of receiving federal child support funding, local agencies are supposed to serve non-custodial as well as custodial parents and local offices are often under pressure to assist non-custodial parents seeking

²⁴ ABA, HANDBOOK, *supra* at p. 145.

²⁵ WASH. C.R. 11 (2009) and WASH. C.L.R.J. 11 (2009).

²⁶ Md. State Bar Assn., Committee on Ethics, Ethics Docket No. 2007-19 (November 5, 2007) *available at* <http://www.msba.org/members/ethics/2007/2007-19.asp> (last visited May 15, 2009).

²⁷ Md. State Bar Assn., Committee on Ethics, Ethics Docket No. 2006-11 *available at* <http://www.msba.org/members/ethics/2006/2006-11.asp> (last visited May 15, 2009).

modifications of child support. As in the case referenced above, the opinion turns on the dual role child support attorneys are being asked to play. Prohibitions against conflict of interest preclude attorneys from representing both opposing parties to a dispute.

It is interesting to note, however, that the child support agency's practice is itself a form of limited scope representation. Child support attorneys distinguish the agency from the custodial parent in providing services, thus avoiding the need to advise custodial parents on collateral issues such as child custody or visitation. Child support attorneys would not need to distinguish the agency-client from the custodial parent-client so affirmatively if there was a general acceptance of limited scope representation in the state. In fact it can be argued that if the child support agencies crafted a well-drafted limited scope representation agreement, they could indeed represent custodial parents without addressing those collateral issues directly.

The third opinion, Maryland Ethics Docket No. 00-22 concludes that an attorney who serves as a managing attorney of several public welfare projects providing reduced fee legal services in various Maryland counties may oversee other attorneys giving legal advice as part of "pro se assistance services."²⁸ This opinion, which predates the adoption of MRPC 1.2 and MRPC 6.5 seems to endorse the practice of providing brief advice through these programs.

Other Sources on Legal Ethics. Other state ethics commissions have weighed in on the subject of limited scope representation. Several opinions, some of which predate the creation and adoption of ABA Model Rules 1.2 and 6.5, specifically authorize the practice.²⁹ In an opinion from 1999, the Los Angeles County Bar Association imposed upon the limited scope attorney an independent duty to inform the client of legal problems that are reasonably apparent, including those relating to collateral issues, even though they might fall outside the scope of the representation.³⁰

A number of ethics commissions and bar associations have specifically found that attorneys assisting litigants in completing or drafting pleadings have no obligation to disclose their role to the court or opposing counsel.³¹

²⁸ Md. State Bar Assn., Committee on Ethics, Ethics Docket No. 2000-22 *available at* <http://www.msba.org/members/ethics/2000/2000-22.asp> (last visited May 15, 2009).

²⁹ L.A. County Bar Assoc. Prof'l Responsibility and Ethics Comm, *supra* (Limited scope permitted so long as the limited scope is explained to the client and client fully consents); Ethics Committee of the Colo. Bar Assn. Formal Op. No. 101 (Jan. 17, 1998; addendum added Dec. 16, 2006) (Unbundled legal services allowed in both litigation and non-litigation matters. A lawyer who provides limited representation must nonetheless make a sufficient inquiry into and analysis of the factual and legal elements of the problem to provide competent representation.)

³⁰ L.A. County Bar Assoc. Prof'l Responsibility and Ethics Comm, *supra*.

³¹ L.A. County Bar Assoc. Prof'l Responsibility and Ethics Comm, *supra*; N. Car. State Bar, 2008 Formal Ethics Op. 3; ABA Standing Committee on Ethics, Formal Op. 07-446 (May 5, 2007); Comm. On Rules of Prof'l Conduct, State Bar of Ariz., Formal Op. 06-03 (July, 2006); New Jersey Advisory Committee on Professional Ethics, Op. 713 (Jan. 18, 2008) (No duty to disclose unless the attorney has counseled the litigant to appear *pro se* as a tactic to invoke the "traditional judicial leniency" toward the self-represented).

The ABA Commission on Ethics and Professional Responsibility rejected the contention that a lawyer who does not appear in the action circumvents court rules requiring the assumption of responsibility for their pleadings. The Commission held such rules only apply if the lawyer signs the pleadings and thereby makes an affirmative statement certifying to the facts.³²

Ethics Questions to Resolve for Maryland Attorneys. Despite the favorable rules climate and the relatively little said in Maryland ethics opinions on the topic of limited scope representation, there remain key questions that Maryland attorneys may need addressed before venturing into unbundled legal services.

1. Malpractice Concerns. In his seminal book on the topic, *Unbundling Legal Services: A Guide to Delivering Legal Services a la Carte*, Forrest S. Mosten notes that some attorneys will continue to fear allegations of malpractice or disciplinary problems if they limit the scope of representation, even with the client's informed consent.³³ He suggests attorneys be provided statutory immunity for acts outside the agreed scope. He suggests courts, bar associations and legislatures enhance attorney confidence by affirmatively endorsing the practice of unbundling.³⁴

Mosten also provides a list of strategies attorneys can use to avoid malpractice, most of which are designed to ensure the client is truly informed of the risks, and that the attorney is thorough and competent. He urges attorneys to conduct a thorough diagnostic interview and investigation of the facts sufficient to identify relevant legal issues. He notes there is "no pass" on competence for limited scope providers. The scope may be limited but the attorney's responsibility to discharge their service competently is not.³⁵ M. Sue Talia admonishes clients that the planning phase during which the attorney evaluates the client, the case and strategies for representation, is "not a time to get cheap about paying your lawyer. The savings [from electing limited scope representation] occur because you will only be paying for the services that you want and need."³⁶ In some ways, the planning phase is even more critical in a limited scope practice.

2. Malpractice Liability Coverage. Attorneys may also fear that their malpractice carriers will deny coverage for limited scope representation. This may be an issue to be addressed with individual carriers. As courts, bar associations and legislatures endorse the practice, professional liability carriers will be more likely to acknowledge coverage. Those entities might also urge carriers to make coverage explicit. The State Bar of California has issued a proposed resolution, pending public comment, that will include a

³² ABA Standing Comm. on Ethics and Prof'l Responsibility, *supra*.

³³ FORREST S. MOSTEN, UNBUNDLING LEGAL SERVICES: A GUIDE TO DELIVERING LEGAL SERVICES A LA CARTE (2000), Chapter 6 available at <http://www.zorza.net/resources/Ethics/most-ethics.html> (last visited March 11, 2009).

³⁴ MOSTEN, *supra*.

³⁵ MOSTEN, *supra*.

³⁶ M. SUE TALIA, A CLIENT'S GUIDE TO LIMITED LEGAL SERVICES (1997) at 37, *cited* in ABA HANDBOOK, *supra* at 67.

provision urging professional liability insurance carriers to endorse limited scope representation as part of the normal practice of law.³⁷

One malpractice carrier summarized it this way:

There is nothing wrong with limited scope representations. They are a good way to attract clients and reduce exposure to malpractice claims. Be sure, however, to get client consent after consultation using the ideas suggested in this article. Risk manage the representation by thoroughly documenting the file and strictly adhering to agreed limitations. The most important point to remember is the duty to look beyond the scope of a representation no matter how broad or narrow to at least identify for the client other potential legal issues.³⁸

Support for Practitioners

There are a range of ways courts, bar associations and others can support and encourage the practice of limited scope representation. The California Access to Justice Commission developed a set of forms, guidelines and handouts for use in limited scope matters. These *Risk Management Materials*³⁹ include best practices, interview checklists, sample fee agreements, additional checklists and Judicial Council forms to be used if and when the case goes to court.

Maryland courts could send a strong message to practitioners by providing standardized, court-endorsed forms for practitioners to use. Forms might include:

- a limited scope retainer agreement to be included as a part of MRPC 1.2;
- notice of limited appearance;
- forms and orders supporting the termination of or withdrawal from representation;
- sample fee agreements;
- checklists;
- sample client letters; and
- educational materials for use with clients

Many of these might be developed by or in partnership with practitioners and bar associations. To the extent that resource materials can be endorsed by the court, they will be more likely to encourage the practice among Maryland attorneys.

³⁷ STATE BAR OF CALIFORNIA, STATEMENT IN SUPPORT OF LIMITED SCOPE LEGAL ASSISTANCE (UNBUNDLING) [proposed resolution] available at <http://calbar.ca.gov/calbar/pdfs/public-comment/2009/Limited-Scope-Statement.pdf> (last visited July 7, 2009).

³⁸ DeI O’Roark, *Where L.A. Law Meets Home Improvement*, KBA BENCH & BAR, May 2000.

³⁹ LIMITED REPRESENTATION COMMITTEE OF THE CALIFORNIA ACCESS TO JUSTICE COMMISSION, FAMILY LAW LIMITED SCOPE REPRESENTATION RISK MANAGEMENT MATERIALS (January 12, 2004) at http://www.calbar.ca.gov/calbar/pdfs/accessjustice/Risk-Management-Packet_2004-01-12.pdf (last visited July 7, 2009).

A Win-Win for Lawyers and Clients

Limited scope representation provides an opportunity for lawyers to expand their practice to provide assistance to those who might otherwise never seek their aid. Attorneys with excellent communication skills and a good set of boundaries can envision ways to structure their practice so that competent clients can engage them for discrete services. Limited scope representation is not appropriate for all clients. Those with diminished capacity or excitable personalities may not be able to handle the rigors and emotional ups-and-downs of the litigation process without undermining their own objectives. But for many, the availability of *a la carte* legal services may provide them the opportunity to pursue their legal objectives with some legal help. It may mean that individuals who would otherwise not pursue their case or enforce their rights, for the first time have the opportunity to do so. Innovative legal practices, like limited scope representation, can enhance access to justice for Marylanders. Together the Bench and the Bar can and should take affirmative steps to support the practice of limited scope representation.

SURVEY OF SELF-REPRESENTED COURT USERS

1. Where did you go to court?

- | | | |
|--|--|---|
| <input type="checkbox"/> Allegany County | <input type="checkbox"/> Charles County | <input type="checkbox"/> Prince George's County |
| <input type="checkbox"/> Anne Arundel County | <input type="checkbox"/> Dorchester County | <input type="checkbox"/> Queen Anne's County |
| <input type="checkbox"/> Baltimore City | <input type="checkbox"/> Frederick County | <input type="checkbox"/> St. Mary's County |
| <input type="checkbox"/> Baltimore County | <input type="checkbox"/> Garrett County | <input type="checkbox"/> Somerset County |
| <input type="checkbox"/> Calvert County | <input type="checkbox"/> Harford County | <input type="checkbox"/> Talbot County |
| <input type="checkbox"/> Caroline County | <input type="checkbox"/> Howard County | <input type="checkbox"/> Washington County |
| <input type="checkbox"/> Carroll County | <input type="checkbox"/> Kent County | <input type="checkbox"/> Wicomico County |
| <input type="checkbox"/> Cecil County | <input type="checkbox"/> Montgomery County | <input type="checkbox"/> Worcester County |

2. Did you go to:

- Circuit Court **OR** District Court

3. What was your case about?

- | | |
|---|--|
| <input type="checkbox"/> Divorce | <input type="checkbox"/> Debt collection |
| <input type="checkbox"/> Child custody | <input type="checkbox"/> Contract dispute |
| <input type="checkbox"/> Child support | <input type="checkbox"/> Traffic |
| <input type="checkbox"/> Visitation | <input type="checkbox"/> Name change |
| <input type="checkbox"/> Paternity | <input type="checkbox"/> Guardianship |
| <input type="checkbox"/> Domestic violence | <input type="checkbox"/> Criminal expungement |
| <input type="checkbox"/> Peace order (dispute with neighbors or others) | <input type="checkbox"/> Driver's license reinstatement |
| <input type="checkbox"/> Landlord/tenant (housing) | <input type="checkbox"/> Don't know |
| | <input type="checkbox"/> Other (<i>please describe</i>): _____ |

4. What language do you speak at home?

- English Spanish Vietnamese
 Korean Russian Other: _____

5. Did anyone provide information about what you can do if you can't afford the court fees?

- Yes No

6. Please tell us about the services and resources you used during your case. Check any of the resources or services that you used, and tell us how helpful they were by circling the best number.

	Very Helpful	Somewhat Helpful	Not Helpful at All	Not Applicable	Not Available
<input type="checkbox"/> Child waiting area	1	2	3	4	5
<input type="checkbox"/> Brochures and written information	1	2	3	4	5
<input type="checkbox"/> Forms and instructions	1	2	3	4	5
<input type="checkbox"/> Pro se assistance project (self-help legal clinic)	1	2	3	4	5
<input type="checkbox"/> Information desk	1	2	3	4	5
<input type="checkbox"/> Court law library	1	2	3	4	5
<input type="checkbox"/> Written information in another language	1	2	3	4	5
<input type="checkbox"/> Domestic violence programs	1	2	3	4	5
<input type="checkbox"/> Mediation	1	2	3	4	5
<input type="checkbox"/> Other (<i>please describe</i>): _____	1	2	3	4	5

7. Do you have a lawyer? Yes No
 If not, why don't you have an attorney? (Check all that apply).
 I cannot afford a lawyer I do not know how to find a lawyer
 It is a simple case I feel that I can handle my case myself
 I chose to represent myself I plan to get a lawyer
 Other (please explain): _____

8. What other services would help you in representing yourself? (check all that apply)
 Help in a language other than English Telephone help (for example a legal hotline)
 Access to a computer at the courthouse Self-help center
 Classes on how to represent yourself A lawyer
 Information about mediation or other alternatives to trial Other: _____

9. Please rate how strongly you agree or disagree with each of the following statements by circling the appropriate number:

	Strongly Disagree	Disagree	I Don't Know	Agree	Strongly Agree	Not Applicable
I was able to find parking	1	2	3	4	5	6
I was able to find public transportation to get to court	1	2	3	4	5	6
Once inside the building, it was easy to figure out which room I needed to go to	1	2	3	4	5	6
I received information about the courts and the process I would go through	1	2	3	4	5	6
It was difficult to understand the materials I was given about the court process	1	2	3	4	5	6
People working in the courthouse (not judges or lawyers) were very helpful	1	2	3	4	5	6
The costs of court services were reasonable	1	2	3	4	5	6
People working in the courthouse (not judges or lawyers) were very respectful	1	2	3	4	5	6
I felt unsafe in the waiting areas	1	2	3	4	5	6
The judge or master treated me with courtesy and respect	1	2	3	4	5	6
I received information about mediation	1	2	3	4	5	6
I was able to tell the court my story and what happened in my case	1	2	3	4	5	6
I was not able to get information about the status of my case from court staff when I needed it	1	2	3	4	5	6
The legal process was fair	1	2	3	4	5	6
I really should have had a lawyer help me with my case	1	2	3	4	5	6

10. Is there anything else you would like us to know about your court experience?

Thank you for taking the time to answer these questions! They will help us improve the court system to serve you better. For survey results, when available, and for additional information about the Maryland Access to Justice Commission, go to www.mdcourts.gov/mdatjc. If you still need help with a legal problem, visit the People's Law Library at www.peoples-law.org for information on Maryland law and how to get legal help in Maryland.