

**Recommendations
of
The West Virginia Access to Justice Commission**

Barriers to accessing the civil justice system create problems on many levels. Nate Bowles, then-President of the Legal Aid Society of Charleston in 1995, commented, “The phrase ‘Equal Justice for All’ should not be an empty one. Our country has a government and a legal system grounded on the legal importance of every citizen. . . . No one is above the law; but we must also ensure that no one is beneath the law.” However, the barriers to meaningful access to the civil justice system experienced by “average citizens” often cause them to feel they are beneath or, at least, irrelevant to the law and that they are unable to access a judicial system that belongs to all Americans. Often people can’t afford attorneys, don’t seek representation believing they can’t afford counsel, or don’t know where to go to find help. They give up before they get started. Others enter the system but are forced to represent themselves, all too often inadequately.

Why is Access to Justice a Problem?

America’s courts are built on a system of rules and procedures that assume almost everyone who comes to court has a lawyer. Unfortunately, the reality is quite different. An increasing number of civil cases go forward without lawyers. Litigants are on their own if they cannot afford lawyers and either do not qualify for legal aid or are unable to have lawyers assigned to them because of dwindling budgets.

The ranks of the self-represented poor have expanded. Unrepresented litigants now include many in the middle class and small-business owners who unexpectedly find themselves in distress and without sufficient resources to pay for the legal assistance they need.¹

Judges and magistrates find themselves in quandaries when self-represented litigants enter their courtrooms not knowing rules, procedures, or the law. Judicial officers are faced with the dilemma of ensuring justice for non-lawyers and moving cases along without providing legal advice. The appearance of self-represented litigants who haven’t had any reference, information, or guidance concerning handling cases on their own may slow down the processes in a judicial system with already heavy dockets. The resulting delay also proves frustrating to the litigants, opposing parties, other counsel, and the judges or magistrates.

There are many other barriers faced by those navigating the civil justice system. They are experienced by those with physical or mental disabilities, those involved in the guardianship process, victims of domestic violence, senior citizens, military veterans, those facing eviction or foreclosure, the homeless, those facing mental hygiene commitments, and small business owners. The common denominator is an inability to pay for representation; however, each group

¹ George, John T. Broderick Jr. and Ronald M. George "OP-ED CONTRIBUTORS; A Nation of Do-It-Yourself Lawyers." *The New York Times*. The New York Times, 02 Jan. 2010. Web. 01 Feb. 2013

also encounters barriers which are unique to it. All are entitled to meaningful access to the justice system.

Why Do We Need to Talk About Access to Justice?

Ignoring the inability of West Virginians to have meaningful access to the civil justice system will not make the problem go away. Indeed, ignoring the problem only compounds it. The lack of accessibility to courts and the lack of informational resources for self-represented litigants frustrate and anger them. Self-represented litigants who are unprepared or uninformed frustrate judges, clerks, and others in the judicial system and slow down the process.

Resolution 23 of the Conference of Chief Justices on January 25, 2001, recognized that equal justice for all is fundamental to our system of government. It acknowledged, however, that the promise of equal justice under the law has not been realized for individuals and families who have no meaningful access to the justice system and that the *de facto* denial of equal justice has an adverse impact on the affected individuals, their families, and society as a whole, and it erodes public trust. The Conference recognized in its Resolution that judicial leadership and commitment are essential to ensuring equal access to the justice system and equal justice for all. It encouraged individual members in their respective states to establish service providers and others (1) to remove impediments to access to the justice system, including physical, economic, psychological, and language barriers; (2) to develop viable and effective plans to establish or increase public funding and support for civil legal services for individuals and families who have no meaningful access to the justice system; and (3) to expand the types of assistance available to self-represented litigants, including exploring the role of non-attorneys.

Recommendations

As a result of the Report of the Access to Justice Commission to the Supreme Court of Appeals of West Virginia 2013, the Commission proposes immediate action in the following areas:

- Encourage support for adequate public and private funding for Legal Aid of West Virginia and other legal services programs that serve low-income and vulnerable clients, ensuring a strong and effective legal aid delivery system, giving all West Virginians meaningful access to justice.
- Introduce, for legislative consideration, proposed revisions to West Virginia Code § 23-5-16, fees of attorney for claimant; unlawful charging or receiving of attorney fees as drafted by the Workers' Compensation Committee.
- Remove the West Virginia Lawyer Disciplinary Board's Legal Ethics Opinion 2010-01 prohibiting "ghost-writing."

- Develop, implement, and educate about “unbundling” of legal services as a means to provide representation to those of low or modest means and update Rule 1.2(c) of the West Virginia Rules of Professional Conduct to coincide with the ABA Model Rules.
- Develop and implement an online self-help center to be used by people who represent themselves in Magistrate, Family, or Circuit Court without an attorney.
- Develop a centrally located hotline staffed by attorneys and/or law students to support the online self-help center and answer questions without giving legal advice.
- Develop and implement a strong *pro bono* program working with the West Virginia State Bar, Legal Aid of West Virginia, and West Virginia Senior Legal Aid.
- Plan and sponsor a one-day *Pro Bono* Summit.

The Commission proposes more review is needed in the areas below before specific recommendations can be made.

- **Assistance for the disabled, including, but not limited to**
 - Establishment of community-based options for treatment for the mentally disabled as alternatives to institutional treatment;
 - Study of legal issues and access to legal assistance for the homeless;
 - Access to guardianship records to persons working as advocates for the mentally disabled;
 - Adequate representation for those subject to involuntary commitment;
 - Establishment of best practices for guardians and conservators;
 - Establishment of a mediation process for dealing with guardian/client related problems; and
 - Ensuring accessibility to courthouses, courthouse parking, and improved signage.
- **Assistance for senior citizens, including but not limited to**
 - Promoting and educating the changes in the Uniform Power of Attorney Act enacted in the 2012 Legislature;
 - Securing access to guardianship records for those working as advocates for senior citizens; and
 - Developing information sessions in conjunction with legislative members using the Older and Wiser program of the Neighborhood Legal Services Association of Pittsburgh, Pennsylvania.
- **Workers’ Compensation**
 - Continuing the efforts of the Workers’ Compensation Committee to examine access barriers experienced by workers in the workers’ compensation system.
- **Assistance for veterans whose needs are not met by Veterans’ Administration or those experiencing difficulty in obtaining benefits**

- ***Pro Bono***
 - Encouraging county bar associations to encourage *pro bono* work;
 - Developing and promoting *pro bono* initiatives; and
 - Developing and promoting corporate *pro bono*.

- **Education and training for**
 - Judges, Magistrates, Clerks and Court Personnel for assisting self-represented litigants, seniors, the disabled, and domestic violence victims.

All West Virginians – of every economic and social status – deserve better than to be lost without help in a legal system they often cannot and do not understand. The West Virginia Access to Justice Commission makes these recommendations as a means of laying the groundwork for ensuring meaningful access to the civil justice system.