

**Report**

**Of**

**The Access to Justice Commission**

**Of**

**The Supreme Court of Appeals**

**Of**

**West Virginia**

**2012**

## Executive summary

The Access to Justice Commission was approved by the Supreme Court of Appeals of West Virginia on December 9, 2008, and established by Administrative Order on January 29, 2009. Commissioners were appointed in 2009; four were nominated by the Court; three by the West Virginia State Bar, including by rule the President of the State Bar; one by the Dean of West Virginia University College of Law; one by the Governor. All were appointed by the Chief Justice and approved by the Court. The terms were outlined in the December 2008 memo. Several *ex officio* members were recommended as follows: Directors of Legal Aid of West Virginia, Director of the West Virginia Fund for Law and the Public Interest, Director of West Virginia Senior Legal Aid, Director of West Virginia University College of Law CLE, one student representative from the Clinical Law Program at the West Virginia University College of Law, and the Administrative Director of the Courts.

The inaugural meeting of the Commission took place on October 30, 2009. Subsequent meetings were held over the course of 2010. A director was appointed for the Commission on March 1, 2011.

The first directive to the Commission as enumerated in the Administrative Order was to “examine, identify, and analyze various barriers West Virginians face when using our legal system.” To address the first directive, the Commission held six public forums around the state in 2011 to give citizens an opportunity to discuss obstacles which they encountered, or of which they were aware. The forums were held in Beckley, Martinsburg, Huntington, Wheeling, Morgantown, and Charleston. Those who could not attend in person were encouraged to submit their concerns in writing or by phone.

The Commission is appreciative to the citizens of West Virginia who provided information. This report summarizes their concerns.

The Commission will continue to seek input in such subject areas as housing, consumer issues, employment, welfare, SSI/SSD, unemployment, and education. West Virginians are encouraged to advise the Commission of issues which arise. The Commission will begin to devise, coordinate and oversee a strategic plan for a statewide, integrated, non-duplicative legal services delivery system and will carry out the remaining directives in the Court’s Administrative Order.

The establishment of the Supreme Court of Appeals of West Virginia's Access to Justice Commission arose out of the recognition of the needs of West Virginians to access the civil justice system. In December 2008, Justice Brent D. Benjamin, working with a group composed of staff from the Administrative Office and Directors of Legal Aid of West Virginia, proposed the empanelment of a permanent, statewide Access to Justice Commission as a mutual interest of the Supreme Court of Appeals of West Virginia, the West Virginia State Bar and the people of the State of West Virginia.

The Court was first presented with a recommendation for creating a statewide Access to Justice Commission in 2004.<sup>1</sup> The original recommendation listed a number of examples of how *average* West Virginians face barriers to accessing justice. Further, the recommendation referred to the Final Report of the Commission on the Future of the West Virginia Judiciary that reported a decrease in necessary federal funding coupled with an "enormous need" for civil legal representation for those with limited incomes. This funding erosion took place despite IOLTA supplementation and *Pro bono* Referral program expansion, as well as increased efforts of self-represented litigants.

The recommendation was that a statewide Access to Justice Commission would address the fact that the "cost of effective legal representation is beyond the moderate means of the ordinary citizen."<sup>2</sup> In the years between the issuance of the Commission's Final Report and the original recommendation, the State Bar's Blue Ribbon Symposium on the Legal Services for the Poor made some improvements to West Virginia's federally-funded legal services programs.<sup>3</sup> The Symposium combined the uncoordinated and separate programs into one statewide Legal Aid program while promoting a technology review, funding option explorations, private bar involvement, intake procedures, and other systems used by the newly combined program.<sup>4</sup>

Following the inception of the Symposium, the Supreme Court of Appeals of West Virginia attempted to address specific barriers to justice through initiatives such as those completed by the Task Force on Self-Represented Litigants, the Task Force to Study Perceived Racial Disparity in the Juvenile Justice System, the committee on Equality in the West Virginia Judiciary (formerly the Task Force on Gender Fairness) and the Committee on Mental Hygiene Reform. The Court has recognized the necessity for improving Access to Justice in these areas. Justice Benjamin, observing the progress made by other states' efforts toward reducing and eliminating barriers to justice, recommended a statewide Access to Justice Commission to coordinate efforts begun by the task forces and committees, and that would be empowered to effectuate long-term, positive systemic change.

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<sup>1</sup> Berger, Irene C., and P. Nathan Bowles, Jr., Esq. "Recommendation to Create a WV Access to Justice Commission." 5 February 2004

<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.*

## Purposes

Justice Benjamin proposed a statewide Access to Justice Commission to identify barriers experienced by West Virginians in accessing the civil justice system; devise a strategic plan responsive to the identified needs; promote the understanding of equal justice; involve attorneys and the judiciary; enhance the understanding of the legal system; communicate information about justice issues; and address existing laws, rules, and regulations that may adversely affect access to justice.

## Governance, Membership, Administration and Organization

It was further recommended that the Commission would answer to the Supreme Court of Appeals of West Virginia and it would be administered as a Special Project by the Court's Administrative Office, Jennifer Singletary, Director. Regarding membership, the Commission as proposed would consist of nine voting members, with initial terms drawn by lot – three serving one-year terms; three serving two-year terms; and the remaining three serving three-year terms. All subsequent appointments of voting members would be for terms of three years, with voting members serving no more than three successive three-year terms. The Supreme Court of Appeals of West Virginia would appoint members to fill vacancies where necessary, and members thus appointed would serve for the remainder of the vacant term. Any member whose term would expire would continue to serve until the appointment of his or her successor.

It was recommended that voting members of the Access to Justice Commission be appointed by the Chief Justice of the Supreme Court of Appeals of West Virginia as follows:

- 1) The Supreme Court of Appeals of West Virginia would nominate **four** members, including at least one Justice of the Supreme Court of Appeals of West Virginia.
- 2) The West Virginia State Bar would nominate **three** members, including the State Bar president or his or her designee, and two additional attorneys possessing experience in one or more of the following areas: corporate counsel, in-house, *pro bono*, and delivery of services to those of low or moderate incomes.
- 3) The Dean of the West Virginia University College of Law or his or her designee would nominate **one** faculty representative.
- 4) The Governor would nominate **one** individual employed in a full-time capacity by a government or non-profit agency dedicated to providing for the needs of low-income West Virginians.
- 5) The Chief Justice should coordinate appointments to ensure that at all times the Commission reflect the diverse ethnic, economic, gender and geographic communities of West Virginia.

In addition to the voting members, the Directors of Legal Aid of West Virginia, the West Virginia Fund for Law in the Public Interest, West Virginia Senior Legal Aid, the West Virginia University College of Law CLE Director, and one student representative appointed annually by the Clinical Law Program at the West Virginia University College of Law would serve as *ex officio* and non-voting members of the commission. The Commission would elect a Chairperson by majority vote from among the voting members to serve a one-year term. Further, the

Commission could select other officers as necessary, pursuant to its established rules and procedures. The Commission would meet, at a minimum, quarterly on the annum, with special meetings that could be called by the Chairperson of the Commission or upon the request of any three members of the Commission, and would provide an annual report of its activities to the Chief Justice of the West Virginia Supreme Court of Appeals.

## **Committees**

Justice Benjamin and the workgroup recommended that the Commission would appoint from among its voting members the following standing committees: Domestic Violence, Access to Justice for Working West Virginians, Resource Development, *Pro Se* Representation, *Pro bono* Services, and such other committees as the voting members found necessary and useful to support the particular needs of equal access to justice in West Virginia. In particular, the Commission perhaps would consider appointing Committees to work on substantive law topics such as Disproportionate Minority Contact with the Court System, Elder Law, and Mental Hygiene and Behavioral Health barriers to justice. In doing so, the Commission could appoint to any committee persons who might not be members of the Commission, and would develop and maintain a roster of other organizations and committees that could be sources of such committee members.

## **Funding**

It was recommended that funding be explored further. Unfortunately, in 2008, legal services for the poor were experiencing a nationwide crisis. Years earlier, the West Virginia State Bar's Blue Ribbon Symposium on Legal Services for the Poor recognized that there were “a host of West Virginians whose need for access to the legal system could not be met through” Legal Aid, such as those who didn’t meet eligibility guidelines, those who could not physically travel to a Legal Aid office, and those who were not bringing approved types of cases.<sup>5</sup> In 2004 -- the same year that the Court considered the original recommendation to create a statewide Access to Justice Commission -- the Symposium reported a more than two-decade-long continual decrease in funding that required Legal Aid to turn away an estimated 75 percent of applicants.<sup>6</sup>

Due to cuts in funding in 2008, especially decreases in funds from Interest on Lawyers Trust Accounts (IOLTA), Legal Aid groups all over the country were experiencing a drastic decline in funding. Legal Aid and other similar groups had to turn away more people and were faced with determining which battered women to help, which evicted families fighting foreclosure should have assistance, and which workers seeking back pay could be helped. During a November 12, 2008, conference call administered by the ABA’s Access to Justice Resource Center, nearly all of the participants reported that their groups were being required to cut back for FY 2009.

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<sup>5</sup> Id. at 2.

<sup>6</sup> Id. at 2.

West Virginia also used IOLTA funding for certain legal services. In 2008, in West Virginia, IOLTA distributions decreased commensurate with decreased interest rates and lessened business activity and contributions. Legal Aid of West Virginia didn't expect to receive \$400,000 for FY 2009, as had been conservatively budgeted. Note, however, that Legal Aid of West Virginia did not experience as dramatic of a decline as some other states, primarily because West Virginia's IOLTA funds did not dramatically increase at the same rate as funds in other affected states over the previous several years and because IOLTA, during higher interest years, established a rainy day fund which helped to keep the decline from being instantly precipitous. Large IOLTA increases in those states funded new staff and projects, which had to be eliminated, temptations avoided by West Virginia IOLTA, which instead, placed higher revenues in the rainy day fund.

The larger funding issue Legal Aid of West Virginia faced was an anticipated cut from its primary funding source, the Legal Services Corporation (LSC). A significant funding decrease from LSC was expected in March 2009, after the continuing resolution ran out. Core LSC funding for Legal Aid of West Virginia was \$3 million -- an amount already significantly less than that of other states' annual operating budgets.

Access to Justice groups in other states were staffed by the Bar, such as the Commissions in Colorado, Texas, and Washington; by the courts, such as -- temporarily -- in Mississippi and in New Mexico; or by some combination of both. Funding came from IOLTA, as in South Carolina's 100 percent IOLTA-funded Commission, mixed with private funds, such as Maine's Justice Action Group, and grant funding. For West Virginia's Commission, funding through IOLTA was *not* recommended at the time of the establishment of the Commission, but rather it was suggested that lawyer contributions should be explored, such as an assessment on yearly fees. Also, grant funding exploration was recommended, particularly for special programming, such as a Guardianship Monitoring Program, Elder Law programming, and traveling programs such as those presented in-house by the West Virginia State Law Library. Proposed budgets of the Access to Justice Commission will be subject to the annual budget of the Supreme Court of Appeals of West Virginia. The Commission and staff supporting the work of the Commission shall comply with fiscal policies and procedures established by the Court.

### **Establishment of the Access to Justice Commission**

Based on the Proposal and Action Plan for a Statewide Access to Justice Commission promulgated by Justice Benjamin and the working group, the Supreme Court of Appeals of West Virginia approved the empanelment of a Statewide Access to Justice Commission on December 9, 2008.

The Access to Justice Commission was created by Administrative Order dated January 29, 2009, by Chief Justice Benjamin, which directed that it

- (1) Examine, identify, and analyze various barriers West Virginians face when using our legal system;
- (2) Devise, coordinate, and oversee a strategic plan for a statewide, integrated, non-duplicative legal services delivery system, responsive to the identified needs;

- (3) Promote understanding of the importance of equal justice and of the problems many West Virginians face in accessing our civil justice system;
- (4) Secure involvement and commitment on the part of attorneys and the judiciary toward expanding access to justice, and develop the capacities of future leaders of access to justice efforts in our state;
- (5) Enhance West Virginians' understanding of our legal system, and of their fundamental legal rights and responsibilities through providing public legal education, and addressing and improving the public perception and public trust and confidence in the court system;
- (6) Provide a mechanism for serving as a clearinghouse for communication and information dissemination about justice issues in West Virginia;
- (7) Assist in the procurement of stable funding and other resources to support access to justice, and work to maximize wise and efficient use of available resources; and
- (8) Address existing and proposed laws, rules, and regulations that may adversely affect access to justice in West Virginia (short-term and long-term).

### **Organization of the Commission**

During the course of 2009, members of the Commission were put in place:

- Four nominated by the Court;
- Three nominated by the West Virginia State Bar, including by rule the President of the State Bar;
- One nominated by the Dean of West Virginia University College of Law;
- One nominated by the Governor.

All were appointed by the Chief Justice and approved by the Court. The terms were outlined in the December 2008 memorandum. Furthermore, several *ex officio* members were recommended as follows: Directors of Legal Aid of West Virginia, Director of the West Virginia Fund for Law and the Public Interest, Director of West Virginia Senior Legal Aid, Director of West Virginia University College of Law CLE, one student representative from the Clinical Law Program at the West Virginia University College of Law, and the Administrative Director of the Courts.

The inaugural meeting of the Commission took place on October 30, 2009. Subsequent meetings were held over the course of 2010. Director Deborah Bogan was appointed for the Commission on March 1, 2011.

### **Public Forums**

The first directive to the Commission as enumerated in the Administrative Order is to “examine, identify, and analyze various barriers West Virginians face when using our legal

system.” In 2011, to address the first directive, the Commission scheduled six public forums to be held regionally around the state to give citizens an opportunity to discuss obstacles which they encountered or of which they were aware. The forums were held in Beckley, Martinsburg, Huntington, Wheeling, Morgantown, and Charleston. In addition to the forums, those who could not attend in person were encouraged to submit their concerns in writing or by phone. The information received by the Commission was extraordinarily thoughtful, well-presented, sometimes poignant, and informative. The information was typically relevant to all West Virginians, and individual concerns were often representative of burgeoning issues faced by our citizens. Synopses of the information received appear below.

### **Legal Services**

In spite of the limitations under which it works, it is well known that Legal Aid of West Virginia (hereinafter LAWV) is the primary provider of legal services to the poor across the state. Eighteen percent of West Virginia’s population is below the poverty line, including about twenty-five percent of the children. Astonishingly, LAWV serves fifty-five counties in West Virginia with only forty-seven attorneys. LAWV receives its funding from a mix of sources, including federal, state, foundation, and private funding, as well as donations. However, the largest amount of support is federal funding from the Legal Services Corporation (LSC). In recent years this funding has been on the decline. On the day of the last public forum hosted by the Commission, which took place in Charleston, it was announced that the United States Senate/House of Representatives conference committee considering the appropriations bill that included LSC funding agreed to a reduction of 14.8 percent in federal funding for legal services. Based on this cut, in real numbers, LAWV projected to lose approximately \$478,000 in federal funding in 2012.

*Figure 1*

<b>Current Funding Status for Legal Aid of West Virginia</b>		
<b>FY 2012 Basic Field</b>	<b>FY 2011 Basic Field</b>	<b>\$ Difference from FY 2011</b>
<b>\$2,751,421</b>	<b>\$3,224,060</b>	<b>\$-472,639</b>

*Figure 2*

<b>Funding History for Legal Aid of West Virginia</b>				
<b>Year</b>	<b>LSC Funding*</b>	<b>Non-LSC Funding**</b>	<b>Total Funding</b>	<b>Targeted Advocacy Funding</b>
<b>2011</b>	<b>\$3,268,425</b>	<b>\$5,303,113</b>	<b>\$8,571,538</b>	<b>\$649,830 Long-term Care Ombudsman \$1,204,589 Behavioral Health Advocacy Project</b>
<b>2010</b>	<b>\$3,378,270</b>	<b>\$5,137,430</b>	<b>\$8,515,700</b>	<b>\$648,092 Long-term Care Ombudsman \$1,168,774 Behavioral</b>

				<b>Health Advocacy</b>
<b>2009</b>	<b>\$3,119,728</b>	<b>\$4,833,676</b>	<b>\$7,953,404</b>	<b>\$675,231 Long-term Care Ombudsman</b> <b>\$1,041,897 Behavioral Health Advocacy Project</b>
<b>*Includes Basic Field and other LSC grants, carryover funds and derivative income</b>				
<b>**Includes special projects funding for non-legal services advocacy for targeted client populations</b>				

*Figure 3*

<b>Legal Aid of West Virginia Workforce</b>				
<b>Year</b>	<b>Attorneys</b>	<b>Paralegals</b>	<b>Other Staff</b>	<b>Total</b>
<b>2011</b>	<b>47</b>	<b>28</b>	<b>50</b>	<b>125</b>
<b>2012 (through August)</b>	<b>47</b>	<b>19</b>	<b>49</b>	<b>113</b>

LAWV was well represented at all of the forums. The Commission heard from Legal Aid attorneys and the clients they serve. In Beckley, Marie Bechtel, Supervising Attorney for the Beckley Office of Legal Aid, brought to the Commission’s attention that the ratio of legal aid attorneys in the U.S. for people who qualify for their services is about one attorney for every 6,413 people; in West Virginia, the average is one attorney for every 6,571 people who live below the poverty line. Ms. Bechtel’s office (which has a staff of three attorneys, one paralegal, one secretary, and two advocates (for nursing home and behavioral health programs) serves Raleigh, Fayette, Nicholas, Mercer, McDowell, and Wyoming Counties. It served 1687 people as of the August forum and had 239 open cases.

Christine Schneider, the Supervising Attorney of the Morgantown LAWV office noted that the biggest obstacle to access to the courts is money. The largest gaps are for those with mental disabilities, learning disabilities, physical disabilities, those with the inability to read or write, and those with substance abuse problems. She has come to realize that not everyone can be empowered. Some people really need on-going help. There are those who cannot read or write, can’t speak for themselves and can’t communicate, and no amount of information is going to get them where they need to be. Those people need actual help; they are never going to be able to use information to represent themselves or navigate the system on their own.

Attorney Jim Bordas addressed the Commission in Wheeling and echoed the need for money for Legal Aid which would enable them to hire more attorneys, thereby helping more people. He is also a proponent for an advocate to help people who need assistance in magistrate court. He recommended an office within magistrate court for the advocate to be available to help those with questions. He or she could advise whether the self-represented litigant had a cause of action, or could assist with the complaint. A fee could be charged for the advocates’ services.

Kelly Beck's Legal Aid office serves Berkeley, Jefferson, Morgan, Hampshire, Hardy, and Mineral Counties with three attorneys, and at the time of the forum had an attorney in a fellowship as well. Three of the counties served by this office are more than an hour's drive away from each. Ms. Beck discussed the distances which the attorneys in her office must travel simply to meet with clients in a remote location. Often they conduct interviews over the phone because their clients don't have a means of transportation. Ms. Beck reported that the case load in her office has continued to increase: in 2010 they handled 1,300 cases, which included direct representation and advice and counsel. Often they turn away potential clients because they simply don't have the manpower to handle them; others are turned away because they exceed the income guidelines. Ms. Beck related an incident which took place in Hampshire County and involved a gentleman who was trying to obtain a protective order at about 3:00 p.m. He called the Legal Aid office for assistance because he was prevented from filing a petition for the protective order. He arrived at the Magistrate Clerk's Office to file it, and a Magistrate who was present reviewed his petition. The Magistrate told him not to file his petition as it would not be granted. Since the gentleman was unable to file his petition, he did not receive a formal ruling. Thus, the gentleman was unable to file an appeal of the decision of the Magistrate. The assistance Legal Aid rendered him had to be done over the phone because their office is so understaffed; no one could go to the courthouse to look things over and help the gentleman.

Melinda Dugas, a LAWV attorney in the Martinsburg office, addressed barriers she has encountered in the short period of time she has been practicing poverty law. She addressed the disproportionate impact that all of the smaller barriers have collectively placed upon people and individuals with cognitive disability and/or behavioral or mental health challenges. Of the 1300 cases handled in the Martinsburg office in 2010, more than half were individuals with behavioral health problems or cognitive disabilities.

At the Huntington forum, the Commission heard from a former LAWV client. She said that the cousin of her ex-husband, whom she considered a friend, babysat her child while she worked as a waitress. She decided to return to Texas and her ex-husband did not object. His cousin, however, filed for custody of the baby. After nineteen harrowing months of limited access to her daughter, delayed hearings, a protracted battle and the help of LAWV, she regained custody of her daughter. She reported that while she had handled her divorce, established visitation for her baby's father, set up child support, and established guardianship on her own, she would not have regained custody of her daughter without the help of LAWV.

Cathy Jo Keeten, a paralegal with LAWV, attended the Charleston forum. She helps LAWV clients with Social Security matters. She discussed the misconception that everyone who gets assistance is lazy or will not work, reporting that 85 percent of all benefits paid go to children, the disabled, and the elderly. Twenty thousand West Virginians receive cash assistance through Department of Health and Human Resources. Considering the announced cuts, Ms. Keeten is well aware she may lose her job. While she feels confident she can find other employment, her main concern is for those who need her services and those of LAWV. She is worried about what will happen to those people.

The sister of a deceased LAWV client felt strongly enough about the assistance rendered her sister by LAWV that she spoke on her behalf. LAWV helped her sister obtain a divorce

from an abusive husband. Because of her illness, her sister was unable to communicate and suffered through an abusive relationship. Legal Aid was instrumental in allowing her sister to have some dignity and gain her divorce.

A woman who spoke at the Morgantown forum said she was a victim of domestic violence, her daughter had been sexually abused; and she had issues that spanned two states. She tried to hire a private attorney but did not have the five to six thousand dollars required. She ended up with an attorney from Legal Aid, not only from West Virginia, but Ohio as well. She was finally able to get custody of her children. She, too, stated that without the help of Legal Aid, she would not have been able to do so.

A physically disabled LAWV client attended the Charleston forum. He reported that he is a college graduate, but had problems which came up in his life which put him in a difficult situation. He emphatically stated that LAWV made great differences in his life and he has a good standard of living because of its help. The agency assisted him with his income, helped him receive Social Security disability for retirement, and helped him get public housing.

Former Justice Larry Starcher reiterated the need for more money for Legal Aid. He believes there needs to be an infusion of money into legal services for the poor and a change to federal laws that now restrict agencies like Legal Aid from doing the types of things they need to be doing. He would also support some type of residency, internship, or externship for lawyers as exists for other professions; however, he acknowledged it would be difficult to police and administer.

It is clear that while Legal Aid provides wide and valuable representation for the citizens of this state, there are many more people who need assistance but cannot be helped. Some of the questions facing the Commission will be how to identify different ways to meet those needs, encouraging others to get involved, and examining the recommendations made at the forums to see how they may be formulated for action.

## **Domestic Violence Issues**

Regardless of the location of the forum, the issue of domestic violence was a topic.

Tonia Thomas, from the West Virginia Coalition Against Domestic Violence (which provides training, technical assistance and policy work) advised the Commission that she believed that as community leaders, judges can and should be catalysts for coordinating the delivery of services to both victims/offenders and petitioners/respondents. When judges take a problem-solving approach to administering justice, the result is greater outreach to the community, greater community resources, and greater access to the justice system. Ms. Thomas brought to the attention of the Commission issues that had been reported to her by advocates who attend hearings with victims, which include

- neglecting and/or ignoring victims' fears by not providing safe waiting areas in courthouses and not coordinating services with community-based advocates, law enforcement officers, attorneys, and other court personnel;

- courtroom intimidation; bureaucratic and indifferent treatment of domestic violence victims;
- condescending and/or harsh demeanor; patronizing displays of authority; harsh or hostile remarks; sexist, heterosexist and racist attitudes; minimizing and denying views; and often victim blaming;
- furthering isolation; failure to connect victims with advocates; and lack of coordination with community resources;
- colluding with batterers by the unwillingness to impose sanctions on batterers, showing greater concern for abusers than for victims seeking protection, and joking and/or bonding with batterers;

She has seen and suggested improvements, such as

- making court hospitable and safe by informing victims of their legal options and providing separate waiting areas for safety;
- connecting victims with advocates;
- displaying supportive judicial demeanor by listening to victims, recognizing the complexity of victim circumstances and choices, and recognizing victim survival strategies;
- connecting victims with resources and information by providing advocates for victims, developing relationships with domestic violence shelters, batterers programs and other community programs; working with community and criminal justice agencies for a coordinated response; providing clear information to unrepresented parties about court procedures; and protecting unrepresented parties and victims from abusive litigation tactics;
- taking violence seriously and prioritizing safety by communicating through words and actions that courts will not tolerate battery; encouraging victims to return to court if they need to; enforcing violation of protective orders and support orders strictly and promptly; imposing sanctions for violating court orders; focusing on needs of children; recognizing effects of battering on children and recognizing the need for victims to have adequate family financial support; providing safety by asking about fears, asking about weapons and firearms, expedience in domestic violence cases; providing ongoing domestic violence training for judges and other court personnel.

Ms. Thomas suggested specific training for judges and court personnel to help them understand the impact of domestic violence and abuse on victims and their families and the roles of the justice system including examining biases which include institutional biases, personal biases, assumptions and stereotypes; assessment of predominate aggressor.

A domestic violence survivor and Legal Aid client attended the Beckley forum and talked about how she found herself in a system about which she knew nothing. She experienced difficulty in physically accessing the courthouse. She had to sit outside the courtroom with her attacker's family. She was unable to collect restitution as ordered by the Court because the Order failed to state a dollar amount. She was told she would need to file a civil suit against him.

The Commission heard from three domestic violence survivors at the Charleston forum.

- The first divorced her husband after seven years of abuse. She was advised to relinquish her interest in marital assets in exchange for relief from marital debt. However, creditors are not bound by the divorce order and then held her responsible for the entire debt. She welcomed her LAWV representation but felt her attorney was overworked and did not have enough time to research her case thoroughly and to explain the consequences of the settlement agreement. She spoke about the need for more Legal Aid attorneys to remove the burden of a large caseload. Having more attorneys would allow them to dedicate more time to building a strong case for their clients and to look out for their best interest. She also suggested the use of advocates to help victims through the process. She closed by commenting that without LAWV she would have had no alternative.
- The second survivor hired an attorney for her divorce in 2000 but did most of the work herself. While trying to navigate the system, she was constantly told by court personnel that they could not give her legal advice. She recommended advocates to help self-represented litigants navigate the system and the need for more information to help those who represent themselves. She also suggested that training for court personnel to assist self-represented litigants better would be helpful.
- Celina Roby, for whom Celina's Law is named, addressed the Commission about her eleven-year abusive relationship. She also recommended the need for advocates to help victims know what to expect as well as education and training for court personnel in dealing with domestic violence victims and self-represented litigants.

Ellen Allen, then Director of the YWCA Resolve Family Abuse Program, provided the Commission with information about the partnership between LAWV and the West Virginia Coalition Against Domestic Violence. Because of that partnership, assistance is provided to domestic violence survivors to navigate the justice system; however, fifty-two lawyers are not enough. There are many things with which domestic violence survivors need assistance, including housing, tax issues, bankruptcy proceedings, behavioral, and mental health problems, health care, accessing public benefits, technology abuse and Individual Education Plans in the education system. She advised that the capacity to extend legal aid to all victims of domestic violence is inadequate. During 2011, Resolve advocates referred 1345 victims of domestic violence for legal aid services, but could easily make about 400 more referrals each year if LAWV had the staff. As a result, they are faced with the challenge of determining which cases have the greatest need for legal assistance.

Legal Aid attorneys, with help from local volunteer attorneys, provided civil legal assistance to 1,981 domestic violence victims through 15,097 hours of service in fiscal year 2011.

## **Disabilities**

Commissioners are aware that some of our historical courthouses may present physical barriers to the disabled. Those who addressed the Commission provided insight to other barriers as well.

Melinda Dugas, an attorney with LAWV in the Martinsburg office, told the Commission that in 2010, more than half of the 1,300 clients they served in her office were individuals with behavioral health issues or cognitive disabilities. They have difficulty in their daily lives and cannot navigate their way through the legal system nor do they have the ability to understand the impact and ramifications of the processes. Cognitive and behavioral health problems affect the inability to communicate with legal professionals. Behaviors are often interpreted as misconduct instead of symptoms of underlying conditions. Lack of knowledge and experience by legal professionals can result in adverse rulings and a denial of resources to the disabled.

In Wheeling, the Commission heard from two American Sign Language Interpreters. They described personal and general incidents which happened to members of the deaf community. The first of the two women to speak to the Commission talked about an incident which happened with her daughter, who is deaf and has a cochlear implant. Her daughter was out one evening with a friend and was pulled over by a police officer. Because of the way her daughter spoke, he presumed she had been drinking. While her daughter reads lips, she couldn't understand what the officer was saying because he was shining his flashlight in the window. Her daughter indicated she was deaf and needed a sign language interpreter. The officer didn't believe her. That single incident was traumatizing and removed any trust her daughter has with law enforcement.

The second interpreter said signs in courthouses for "TTY" are out of date, because video phones are now used. She also noted two incidents in which she was involved. One involved a deaf individual who was placed on home confinement but because the electronic bracelets are hooked up through telephone lines and deaf individuals don't have telephones, the person installing the device did not know what to do. Another incident involved a deaf individual who was pulled over. He handed the officer his Section 504 card indicating he was deaf and entitled to an interpreter; the officer said one wasn't available.

Both of these women talked about the need for education within the legal system for those with hearing disabilities, those who are blind, those with disabilities in general, and the need for more training for court personnel, law enforcement, and others who may come in contact with them.

Jodie Gardill, Director of the Behavioral Health Program for Legal Aid, handles cases for clients who have behavioral health diagnoses. She described the problems she has seen for those who have a behavioral health diagnosis and those who access mental health services for substance abuse issues who are not always in treatment or current with their treatment. Depending on their mental state, they may say or do things which may cause a breakdown in communication, create difficulty in representation, or that they do not actually mean. Because of

the Professional Rules of Conduct, it can place the attorney in a problematic situation and make it difficult to continue to represent the individual. Ms. Gardill recommended an examination of the Professional Rules of Conduct to include some guidance for attorneys who find themselves in this situation. She also recommended education opportunities for attorneys in dealing not simply with a “difficult” client, but one who may have a disability which provides them with little or no control.

Ms. Gardill also suggested there should be more flexibility of timelines and/or scheduling orders when dealing with parties who have a behavioral health diagnosis. Due to a fluctuating psychological state, it may be difficult for such people to be attentive, available, and participants in their cases. Their inability to assist their attorney creates difficulty adhering to the deadlines set in place by the Court. She suggested developing some sort of trigger that would permit the modification of a scheduling order due to the issues occurring with an individual because of his or her disability. Such a modification of deadlines would prevent a detrimental ruling or finding of default due to a party’s failure to respond or file timely.

The Commission also heard from two attorneys who have physical disabilities. A Morgantown attorney, pointed out that lawyers don’t try to help those with disabilities, often because they are not educated to deal with those with mental, psychiatric, or physical disabilities. He suggested courses in law school and CLEs for lawyers to aid and encourage them in handling such cases. He also mentioned that those representing juveniles need education about Individual Education Plans (IEPs). These plans define the individualized objectives for students who have been defined with a disability as defined by federal regulations. The IEP is designed to help children reach educational goals more easily than they otherwise would. He also discussed that he is often made to feel unwelcome in some courthouses and has been informed by some within the court system they would rather he not practice in their county because of his disability.

Both attorneys addressed the physical difficulty in accessing courthouses, and mentioned that the handicapped parking may be quite a distance from the handicapped entrance, sometimes blocks away or on the other side of the building. Better signage providing information such as directions, phone numbers, etc., would be helpful to those needing to access the courthouse.

Representatives from the Northern West Virginia Center for Independent Living provided insight to the problems facing those with disabilities. The first to address the Commission was a peer support counselor who is often asked by those with disabilities to attend meetings with their lawyers or go to court with them because they have anxiety or are confused about the process. She worries about her participation in meetings with her clients and their attorneys in criminal cases because it may jeopardize privileged information. She suggested there needs to be some middle ground. She said she has found that there is little consideration for the literacy and comprehension levels of people with disabilities to understand court documents and proceedings and there is a need for court advocates to help facilitate understanding. She also discussed the issues with guardian status. Individuals claim they are represented by a guardian, but their status is sealed unless someone voluntarily submits it to the public. Consequently, she is unable to access and confirm their rights. She suggested some sort of access to guardianship records with the consent of the guardian.

The next representative from the Northern West Virginia Center for Independent Living was a housing advocate for those with disabilities. She said there is a lack of understanding for those with disabilities and what their rights are. They, in turn, have difficulty understanding how the system works, knowing the difference between a criminal and civil case, and understanding their leases. The Northern West Virginia Center for Independent Living has worked with LAWV and the Attorney General's Office to update the landlord tenant manual, but the problem is determining how to distribute the information. Those with disabilities and those representing them need to know what their rights are. Disability rights laws are extremely complex. It is difficult for an individual to ascertain whether his or her complaint is grounded in Fair Housing, Section 504 of the Rehabilitation Act, or the Americans with Disabilities Act. Complaints in each of these different areas need to be made to different agencies, whether federal or state. She suggested it would be helpful if those who are dedicated to practicing disability law could be able to advertise what they do so individuals needing that type of representation may easily find it.

The Executive Director of the Center also addressed the Commission. Since West Virginia has the largest population of people with disabilities per capita in the nation, she recommended an examination of the representation system for individuals with disabilities. Often during the mental hygiene commission process, people don't meet their attorneys until five minutes before the hearing, which often ends in commitment to a psychiatric facility. That is not adequate representation for these individuals. There are issues with guardianships and payeeships which she said need to be examined. She said there is an institutional bias in West Virginia that forces individuals with disabilities who need services to seek those services in an institution because of the lobbying effects of nursing home administrations and the DHHR's inability to move to community-based services. She said there are nationally proven statistics that community-based services will save the state millions of dollars in long-term care, if the rebalancing effect would be to move an individual to the community so the person can live, work, and contribute to the community. She also indicated that she felt this particular area would fit well into a clinic for the West Virginia University College of Law.

A Disability Employment Specialist from the Center for Excellence in Disabilities at West Virginia University contacted the Commission via e-mail expressing her concerns for those with disabilities in accessing the justice system. She pointed out physical barriers to courthouses, lack of a roadmap for navigation of the legal system by self-represented litigants, culture of "slum" landlords' power over poor people who cannot rent from anyone else, transportation, little or no assistance for those who have difficulty reading. She complained that court-appointed attorneys are not required to have any disability training which leads to inadequate representation for specific issues. She said there is a lack of adequate signage and the legal system which does not understand the rights of people with disabilities. She suggested possible solutions, such as revision of landlord/tenant laws, mandated disability training for court-appointed counsel for those with disabilities, informational materials on navigating the judicial system, traveling to court, and a guide who would serve as an informational bridge between the legal system and the disability community.

There are at least ten federal laws that protect the civil rights of people with disabilities. The goal of these laws is to ensure that people with disabilities have an equal opportunity to

participate in various aspects of society. Compliance with the Americans with Disabilities Act in West Virginia courthouses can be difficult due to the physical condition of the old, often historic buildings, especially those that are in downtown areas with little room to make changes to the structure or parking. And counties often do not have money to renovate. The West Virginia Courthouse Facilities Improvement Authority is beginning a year-long study of county courthouses. The Commission will be working closely with the Authority on this study as it relates to accessibility of courthouses.

Clearly, assisting those with disabilities is important. The Commission received valuable input from citizens around the state and will use it in determining how to address these needs.

### **Guardianships/Powers of Attorney**

The West Virginia State Long-Term Care Ombudsman addressed the Commission concerning the abuse of authority granted by different legal devices, whether it be durable powers of attorney or guardianships. Those who live in nursing homes are somewhat isolated from the rest of the community. As part of advanced planning, they execute documents to enhance their decision-making once they lose that ability. The problem is that many of them do not understand that they are the boss in their own Power-of-Attorney situations. The person acting for them is an employee or agent; agents don't understand or choose to ignore that they are accountable to the principals. Often there are not accountings of how their money is being spent. Being in a nursing home allows limited access to an attorney, and often the attorneys who drafted the Powers of Attorney will not speak to them because they need to go through the Powers of Attorney. The Joint Commission on Interstate Cooperation and AARP are working on a Uniform Power of Attorney Act. In conjunction with that, she recommended continuing education on the subject.

The other issue addressed by the Ombudsman concerned court-appointed guardians. People who are residents in nursing homes and long-term care facilities are sometimes labeled incompetent. They have legal counsel during the process of guardian appointment but no access to counsel if problems arise later. Many regain their decision-making capacity and don't need the continued assistance of a guardian. She also recommended enhanced training for guardians and suggested an intermediate process to access the legal or mediation system for those experiencing problems with their guardians. The ABA introduced a best practice model for courts to implement for volunteer monitors who would train people to go into communities and monitor both protected persons and guardians.

### **Homeless**

The Director of the YWCA Resolve Family Abuse Program in Charleston advised the Commission that there are civil rights and access issues among the homeless. There is a high intersection of homelessness and domestic violence victims. Early legal intervention can help victims retain their homes and receive financial assistance. Coordination of different legal issues within the framework of other community services is essential, particularly housing and welfare agencies. Legal and social issues of the homeless are intertwined. They find themselves caught in marginal accommodations and often have mental and behavioral issues and limited resources, all of which make them more vulnerable to compounded and spiraling legal problems.

## **Immigration Issues**

The Director of the YWCA Resolve Family Abuse Program also addressed immigration issues, in which she said access to justice is critical. The Victims of Trafficking and Violence Prevention Act created U visas. The visas apply to immigrants, who are victims of certain crimes including sexual assault, domestic violence, and trafficking, and offer protection and guarantee legal services for individuals of those crimes regardless of immigration status. The victims of these crimes receive temporary legal status and work visas for up to four years. The domestic violence programs are seeing more and more immigrants who do not understand they have the right to live free from domestic violence. The issues are so complex that having the capacity to provide the same lawyer throughout is important, she said.

## ***Pro bono*/CLE**

As one would imagine, there are supporters and detractors of *pro bono* legal services, or whether such services should be mandatory. Several attorneys addressed the issue at the forums.

David Lockwood, a Huntington attorney, supports mandatory *pro bono* work or, in the alternative, a financial contribution from attorneys in lieu of representation. He suggested one manner in which it could be done would be for circuit judges to have a list from which appointments could be made when a litigant needs assistance.

Cheryl Henderson, another Huntington attorney, indicated she wasn't sure how she felt about mandatory *pro bono*. She was not sure that she would want someone representing her who doesn't know what he/she is doing. She thought the Supreme Court should strongly encourage *pro bono* rather than mandate it.

Jim St. Clair, who attended the Wheeling forum, is in favor of mandatory *pro bono* work. He said he believes that those who do not want to do it should be required to pay (and not just some nominal amount).

Noel Foreman, another attorney, addressed the Commission in Wheeling. He talked about the Ohio County Bar's *pro bono* program, which has a large number of attorneys who participate. The local Legal Aid office has a list of Ohio County Bar Association lawyers who are assigned a day to interview people who are scheduled at the Legal Aid office. The attorneys provide advice or guidance to those who need it. The Ohio County Bar Association also has a system in place to send cases to attorneys who sign up to do *pro bono* work. There is follow up included to monitor when the cases reach resolution. Mr. Foreman suggested that the incentive to do *pro bono* work should begin in law school. He said that while he was a student, it was stressed to him that it was his responsibility as a professional to assist people who could not afford counsel. In doing the work, he found he felt rewarded and appreciated by the people for whom he did work. Mr. Foreman suggested workshops for lawyers to assist them in areas of the law in which *pro bono* attorneys are needed.

Marie Bechtel, Supervising Attorney for the Beckley Legal Aid Office, reported to the Commission that she has researched how other state Bars respond to the need for *pro bono* attorneys and found that some have a mandatory reporting requirement and others highly encourage their attorneys to provide *pro bono* work. She recommends that *pro bono* work be on the State Bar's website and be handled in the same manner as CLE. As a way to encourage lawyers, she suggested a comprehensive ad campaign throughout the state directed to the public asking the question "Is your lawyer serving his or her moral responsibility in helping the less fortunate?" She suggested ten hours of *pro bono* work per attorney per year as a minimum. An insignia for a firm's letterhead could be offered to firms for recognition of various levels of *pro bono* work performed. She also suggested that the CLE series provide a graduated break on CLE hours to reflect the number of *pro bono* services provided by an attorney. She recommended working with attorneys who are not currently practicing to get them involved with volunteering with Legal Aid. They would be covered by LAWV's insurance, and technology allows a great deal of work to be done by an attorney without his/her ever leaving home. She also said that she did not believe every instance of an attorney giving "free" advice should count toward *pro bono*, and also doesn't think it needs to be limited to solely representation-type assistance. Legal Aid, along with the Bar, could assist in monitoring of the *pro bono* work performed. Finally, Ms. Bechtel addressed the clinics at the law school. They are now limited to the Morgantown area, but she suggested they could be used around the state if students could spend a semester working somewhere else in the state, provide a clinic while there, and attend classes by teleconference. She also recommended externships, and she suggested exploring allowing second and third year law students to give more advice under the strict supervision of an attorney.

Brenda Miller, Circuit Clerk of Ohio County, suggested maintaining a list of attorneys who are willing to do *pro bono* work and making it available to clerks' offices. In this manner, those coming into the clerk's office who need an attorney could be referred to someone on the list. She also suggested an "Ask a Lawyer Day." Attorneys would work with public libraries to provide one day a month where the public could sign up for a thirty-minute time slot to get help with forms, to ask questions, and to get some guidance.

### **Self-represented Litigants**

Cheryl Henderson, a Huntington attorney, believes there is a need to educate the public about the court system. This could be done with forms, online material, written material (available in the clerk's office), seminars, open forums, or any way possible to disseminate information to help people find their way through the system. She also reminded the Commission that there are many people who are uneducated and may have difficulty using the information, and others don't have a computer.

Senior Status Magistrate Rose Humway suggested that it would be helpful to have an outline or handbook for self-represented litigants to use when preparing pleadings or maneuvering through the system. She likes the idea of an advocate to help, but also recognizes it would be expensive.

Reverend Darrell Cummings, a pastor, chairman of the West Virginia Human Rights Commission, chairman of the Youth Services System, and chairman of the Black Clergy

Alliance of the Upper Ohio Valley, told the Commission that court staffs are not always accommodating, friendly or helpful to self-represented litigants who have questions. He suggested a handbook for West Virginia judges and magistrates to help them work with self-represented litigants who appear before them and a handbook for self-represented litigants.

Brenda Miller, Circuit Clerk of Ohio County, advised the Commission that the clerk’s office is often the first place people go to seek help when they have a problem. She believes that there are already many things in place to help those who need it, but the public isn’t aware of them or don’t know where to find them. She suggested first determining what information is already available, how the information is lacking, and then tackling it from there.

In the past, the Court distributed a booklet titled “Going Solo.” It was pulled from circulation in 2011 because it contained outdated and incorrect information. This particular manual was a topic of discussion at the Magistrate Conferences in the spring of 2012. The magistrates indicated that it was a helpful piece of information for those representing themselves and something they felt comfortable distributing when someone needed assistance.

The following information shows the number of self-represented litigants in the Circuit Court System across the state from 2009 to 2011.

**Figure 4**

<b>Pro Se Statistical Summary Yearly Comparisons 2009-2011</b>							
<b>Year</b>	<b>Total Self-Represented Litigants</b>	<b>Total All Litigants</b>	<b>Two Parties w/One Represented</b>	<b>Two Parties w/Neither Represented</b>	<b>More Than Two Parties w/One Not Represented</b>	<b>Cases Filed This Period</b>	<b>Indigency Affidavits Granted</b>
<b>2009</b>	<b>26,753</b>	<b>120,337</b>	<b>13,552</b>	<b>5,918</b>	<b>883</b>	<b>47,208</b>	<b>7,221</b>
<b>2010</b>	<b>29,062</b>	<b>139,110</b>	<b>14,502</b>	<b>6,240</b>	<b>1,359</b>	<b>62,967</b>	<b>9,941</b>
<b>2011</b>	<b>28,446</b>	<b>132,930</b>	<b>13,224</b>	<b>6,210</b>	<b>1,530</b>	<b>59,603</b>	<b>9,565</b>

Counts for 2011 will not match the total number of case filings for Circuit and Family Court due to missing Pro Se reports for five counties. Furthermore, the decreases from 2010 to 2011 could be a result of missing data.

### **Non-Lawyer Advocates**

Paul Harvey, a non-lawyer advocate for twenty years, addressed the Commission in Huntington. Advocates are needed to work with domestic violence victims and he believes that former police officers, many of whom have degrees, would be good advocates. Mr. Harvey believes advocates should be educated and required to attend continuing education. He suggested an advocate’s office be in the courthouse where people having questions or needing assistance normally go.

### **Family Law/Domestic Relations**

Lisa Tackett, Director of Family Court Services, advised the Commission that Family Court dockets are increasing and more litigants are representing themselves. There are

approximately 36,000 cases filed each year, 15,000 cases reopened, and 15,000 domestic violence actions. In most areas of the state, eighty percent of the cases involve at least one self-represented litigant, and often they are on both sides of the case. Because of the high percentage and numbers, issues such as spousal support and child support are being litigated by individuals with no legal training and no true understanding of the court system. Assets, including retirement and pensions, which are often the most valuable marital assets, are not reported or are not assigned a value. Often these assets are bargained away for more time with children, or women who are victims of domestic violence give up all financial assets to protect their children. What exists is a very quick and speedy way of separating and divorcing with little understanding of the financial consequences. Once there is a settlement agreement and an order entered, it can't be modified.

Ms. Tackett discussed the possibility of exploring the development of an educational program for litigants to provide them with information concerning equitable distribution, definition of financial assets, marital property, and separate property before their first hearing. She also believes that there is a great need for attorneys to represent individuals in family court. Many attorneys say they have little or no knowledge in the area of family law and say that is why they do not take those types of cases. She stated that she thinks attorneys are capable of doing more than staying in one area of law.

Ms. Tackett also mentioned that it is not just under-advantaged individuals trying to navigate through family court self-represented, but the middle class as well.

**Figure 5**

<b>Family Court Statistical State Summary Self-Represented Litigants 2009 to 2011</b>							
<b>Case Type</b>	<b>Total Self-Represented Litigants</b>	<b>Total All Litigants</b>	<b>2 Parties One Represented</b>	<b>2 Parties Neither Represented</b>	<b>More Than 2 Parties w/One Not Represented</b>	<b>Cases Filed</b>	<b>Affidavits of Indigency Granted</b>
<b>Divorce</b>							
<b>2009</b>	8,648	22,592	6,171	1,218	4	11,062	5043
<b>2010</b>	9,869	26,868	6,864	1,472	22	13,388	5,717
<b>2011</b>	9,025	24,673	5,756	1,249	360	12,036	5,370
<b>Other Domestic Relations</b>							
<b>2009</b>	1,816	18,547	1,055	181	383	7,654	1,144
<b>2010</b>	2,211	21,575	1,217	238	537	8,695	1,354
<b>2011</b>	2,007	21,119	1,090	198	337	8,384	1,443
<b>Domestic Violence</b>							
<b>2009</b>	12,473	26,264	4,094	4,193	15	12,993	603
<b>2010</b>	12,393	29,394	3,843	4,139	20	14,504	867

<b>2011</b>	12,648	28,670	3,735	4,428	8	14,116	693
<b>Magistrate Domestic Violence Appeal</b>							
<b>2009</b>	91	153	12	39	1	76	8
<b>2010</b>	168	284	37	64	2	142	8
<b>2011</b>	137	273	30	44	7	132	24

Counts will not match the total number of case filings for Circuit and Family Court in 2011 due to missing Pro Se Reports for five counties

Family Court Judge David Greenberg brought to the Commission’s attention the inability of family courts to access NCIC, records which are an accumulation of public information related to a person’s criminal history and domestic violence proceedings. NCIC contains information concerning convictions and arrests and is public information. Not having NCIC information available denies fair access to justice for victims of domestic violence and children whose parents have been involved in domestic violence or who have a history of illegal drug use. When he first took the bench, he had access to those records. Subsequently, he received a letter in June 2011 from the State Police advising that it was a mistake to give family court access to NCIC because it is a civil court; however, he is required to determine whether there has been a violation under WV Code 61-2-9A, which is a criminal statute. He cannot determine if there has been a violation without the report.

Family Court Judge Sally Jackson also reported to the Commission that there is a great need for low-cost attorneys in the area of family law. She has seen an increase in self-represented litigants in her courtroom. Litigants come before her who advise the parties “agree on everything,” but really do not have any idea of the issues they should be examining. They may not realize the value of a pension, because they don’t know to ask. Most self-represented litigants don’t get attorneys because they don’t think they have anything to find out.

### **Magistrate Court**

Melinda Dugas, an attorney with LAWV in Martinsburg, spoke to the Commission concerning the Magistrate Court system. Because of the way it is structured, it sets the magistrate up to fail, she said. There is a common misconception that issues dealt with in magistrate court are minimal; however, the cases which pass through magistrate court are critical to low-income families with little or no resources. Magistrates deal with housing cases, consumer cases, and domestic violence cases, to name a few. She suggested that the magistrate court system is set up in a manner to deny litigants the right to trial by jury and deprives them of due process.

Jim Bordas, an attorney in Wheeling, said the magistrate court system needs help. He suggested full-time advocates in the magistrate courts to help people on a daily basis. The

advocates would be people who would help citizens file complaints, answer questions, and help in the process.

A victims' advocate in Raleigh County, advised the Commission of the statewide inconsistencies in the magistrate court system which makes it difficult for victims' advocates to help those who are in need. The advocates are available to help victims navigate the system, and often assist in multiple counties. Uniformity in the handling of cases from county to county would make it easier for advocates to help victims statewide. It often begins with whether an advocate is contacted to aid a victim. If a victim is not put in touch with an advocate before the first hearing, often the case may fall apart. A victim may be too afraid to attend alone, or may be receiving threats from the attacker about what will happen if the victim does appear. She also addressed the need to make people aware of the systems which are currently available to help them.

### **Court Personnel**

Several attendees suggested to the Commission a need for training for court personnel to assist the public better. Often people who have questions receive the response "we can't give legal advice." It was suggested that because those needing help often seek it in a clerk's office, it would make sense to put computers in clerks' offices for public use and/or to set up kiosks in the clerks' offices.

### **Military/Veterans' Affairs**

Mike Lyons, Operations Manager for the West Virginia Department of Veterans' Affairs, reminded the Commission that West Virginia has more veterans per capita than any other state. Every war has its own signature illnesses; most recently veterans are returning with Post Traumatic Stress Disorder and Traumatic Brain Injury. Homelessness, the divorce rate, domestic violence, drug abuse, and unemployment are up among veterans. Mr. Lyons recommended a Veterans' Court which would create a therapeutic environment that fosters rehabilitation, for those who agree to a treatment route, rather than jail. There are currently forty-six such courts in twenty states; one in Buffalo, New York, has a zero recidivism rate. It would be very similar to the current Drug Courts in West Virginia. Currently, West Virginia has one such court set up in the northern panhandle.

The Commission also heard from Jordan Ballard, a Legal Fellow working with LAWV in the Martinsburg office. He encouraged the Supreme Court and LAWV to provide training for lawyers who represent veterans with PTSD. Mr. Ballard explained that veterans have problems with housing, family cases, child custody, divorce proceedings, debt issues, bankruptcy questions, tax questions, etc., which often intersect with problems brought on or complicated by PTSD. He encouraged members of the Bar to take on one *pro bono* case per year to help a veteran.

### **Law Libraries**

The Commission heard from several individuals who were concerned about the closing of law libraries around the state. Some pointed out the lack of Internet service to some areas of the state, which limits access for some to do research online. Additionally, there are charges for some online research, which makes it prohibitive for others. Ulysses Jaen, a law librarian from Morgantown, suggested that law libraries promote equitable access to justice for everyone. Law libraries bridge the gap for those who cannot afford lawyers yet need to have ready access to get the information they need. While public libraries can do some of the same functions, those who work there don't understand the complexities of the legal field. It would be necessary and beneficial for law libraries to work with public libraries.

## **Procedural Rules**

Family Court Judge Bruce Lazenby brought to the Commission's attention the need to evaluate procedural rules for notice. Many people no longer have a permanent mailing address or land line phone. In the rapidly advancing world of technology, many people rely on email and other forms of social media, rather than regular mail.

## **Drivers' Licenses**

Bill Laird, Senator from Fayette County who is also a former sheriff and magistrate, expressed his concern to the Commission about the revocation of drivers' licenses due to failure to be able to pay a fine. He reported that West Virginia revokes and suspends approximately 90,000 driver's license each year; 54,000 of those are revoked or suspended due to nonpayment of fines and court costs. Senator Laird believes the poor are being criminalized for being poor. The court has made provision for partial payment, and an individual may make a motion to the court and be given 180 days in which to pay fines and court costs. He doesn't believe there is a provision in the Magistrate Court Rules to appear back before the court and by motion ask for a continuance or otherwise renewal of that period. He suggested the Commission take a look at it from a procedural fairness standpoint and an access standpoint.

## **Elder Law**

Lynn Dipasquale, Director of the Northwestern Area Agency on Aging, recommended an increase in elder law training to the Bar. She indicated that things are much more complicated for those over 60 who are raising their grandchildren and the many issues that go along with raising minors, reverse mortgages, Medicaid estate recovery, Power of Attorney, and Medical Powers of Attorney to name a few. Seniors are taken advantage of all the time, and they need information and education. Ms. Dipasquale suggested an outreach to all senior centers in every county patterned after the Secretary of State's efforts to introduce the new voting machines. The outreach to senior centers could be developed in conjunction with directors of individual county senior centers. Whoever is doing outreach would visit senior centers and discuss issues. Seniors are often more comfortable talking one on one.

The Commission heard from an 81-year-old man from Charleston who received a ticket for running a red light. He arrived on time for his hearing but had to wait three hours for his case

to be called. He described the atmosphere in the courtroom while he was waiting as a “real circus.” He said the officers and other court personnel were laughing and talking. When his turn finally came, the judge asked if he was guilty. He said “yes, but” and was immediately cut off, given no opportunity to speak or ask questions. He wanted to explain that he had been a drivers’ education instructor for fifteen years, and had taught the “last clear chance doctrine,” which he followed when he got the ticket. He recognized that his mistake was not looking up at the light earlier so he would have time to stop, but he also wanted to explain that he had a stellar driving record for sixty-one years and thought that should be worth some reduction of the fine. He thought that after three hours of waiting he deserved at least five minutes of the Court’s time to explain.

This is a common complaint from seniors who have been to court. They aren’t given the time to speak and are cut off quickly. They feel they do not get their day in court. That, coupled with some fundamental misunderstandings about the law and the court system, makes it a very frustrating process for seniors who feel they deserve a little more respect. For many seniors being respectfully heard is as important as or even more important than winning.

The Commission plans to continue its efforts to gather input from seniors concerning difficulties they face in accessing the system. One such effort has included Justice Benjamin’s “drop-in” visits to senior centers. Seniors have discussed the inability to find adequate transportation to a courthouse, have had questions about when a Power of Attorney is needed, have children who are pressuring them to execute a Power of Attorney, and want to know how to revoke a Power of Attorney. Seniors also mentioned a lack of available information about who or what agency to contact about specific issues, such as the dangers of providing information when solicited over the telephone, or by “contractors” showing up at their doors.

## **Workers’ Comp**

Tom Gessler, a workers’ compensation claimant, spoke to the Commission about how long the process takes and about companies who appeal simply to lengthen the process. He also discussed that payment for one injury may be withheld while another is being litigated.

The Commission’s Workers’ Compensation Committee has been meeting over the course of 2012 to examine opportunities and to propose recommendations to simplify the Workers’ Compensation process.

## **College students**

Steve Hensley, Dean of Student Affairs at Marshall University, informed the Commission about the difficulties students have primarily in the area of landlord/tenant law. This is especially true for foreign students who are often unfamiliar with their rights as tenants. They feel victimized by local vendors and landlords, and they don’t see our court system as a viable option for them, because many come from countries where the local court system or government isn’t helpful. Marshall has a list of attorneys who will render advice for students based on the complexity of the case and their prior entanglements. Marshall had its own attorney

in the past to assist students but no longer does. WVU, however, has an attorney to assist students.

In dealing with landlords, the Marshall dean finds that often unscrupulous landlords treat the security deposit as the 13<sup>th</sup> month's rent with no intent of returning any of it. He previously worked on a proposal to the Legislature that addressed the needs of property owners and renters, but it didn't progress through the Legislature.

## **Law Schools/Clinics**

Jim St. Clair, a Huntington attorney, spoke to the Commission about the need of law schools actually to teach students how to practice law. He suggested that the State Bar should have seminars for young lawyers to teach them how to move their practices along. The ABA management section addresses this issue. Mr. St. Clair said that being a lawyer is a profession. There is a duty of charity owed.

Marjorie McDiarmid, Professor, WVU College of Law, runs the clinic program. She estimated that in 2010, the law school, students, and faculty provided 40,000 hours of *pro bono* representation to West Virginia citizens. The Commission also heard from students who worked in each of the clinics who discussed the advantage and reward of such a learning experience.

The WVU College of Law offers the following clinics:

- **Child and Family Law Clinic.** Works with West Virginia children and families of limited income to promote their health, security and future successes. This clinic assists children and families with limited income who need free legal assistance in civil matters. This clinic has also undertaken a medical-legal partnership addressing needs of families who are undergoing medical treatment.
- **Clinical Law Program.** Offers an opportunity to qualified third-year law students to represent clients under faculty supervision. The objective of the clinic is to expose students to all phases of lawyering, client interviewing, and counseling; advocacy in trial courts, before administrative tribunals, and in appellate contexts; drafting of briefs and pleadings; negotiating; and other lawyering skills.
- **General Clinic.** Provides civil legal services to qualified clients. The primary areas of concentration are family law (including violence protection, custody, support, divorce and adoption), social security and other public benefits, property issues, and consumer debt relief.
- **Innocence Project.** Involves inmates in state institutions who allege that physical evidence can actually establish that they are innocent of crimes of which they were convicted.

- **Veteran's Assistance Project.** The newest program, a cooperative agreement between law school, clinic, and Veterans' Hospital in Clarksburg to provide outreach services to veterans.
- **Entrepreneurship Clinic.** Assists fledgling businesses with correct legal structure and beginning their businesses on sound legal footing.
- **Low Income Taxpayer Clinic.** Provides information, advice, and representation on federal individual tax matters to low-income individuals. Unless closely tied to a controversy, the Tax Clinic does not assist in the preparation of current income tax returns.
- **Local *pro bono* project.** Assists petitioners in Monongalia and Preston County family courts with respect to domestic violence petitions.
- **Immigration Law Clinic.** Provides assistance for asylum seekers, people who need status adjustments and others who have immigration matters pending before the immigration service.
- **Land Use and Sustainability Clinic.** A new clinic (2012) which will enable citizens of West Virginia who want to preserve their lands and natural resources for future generations to create appropriate trusts and other documents for that goal.

Several students were recently involved in a Supreme Court clinic in which some students, under the guidance and experience of national practitioners before the U. S. Supreme Court, prepared cases and pleadings for that forum.

## **Conclusion**

The Commission is appreciative to the citizens of West Virginia who brought to its attention the many barriers encountered in accessing the civil justice system. The identification of problems will continue and West Virginians are encouraged to advise the Commission of issues which arise. Using the information provided by those who attended the forums, called, or submitted their concerns via mail or email, the Commission will begin to devise, coordinate, and oversee a strategic plan for a statewide, integrated, non-duplicative legal services delivery system, as well as carry out the remaining directives in the Court's Administrative Order.