Standing Committee on the Delivery of Legal Services

2011
Year in Review
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### Table of Contents

Message From The Chair ................................................................. 4  
OUTREACH ................................................................................... 5  
Reports .......................................................................................... 8  
Events ............................................................................................ 11  
Initiatives/Programs ..................................................................... 12  
POLICY ......................................................................................... 12  
Recommendations to the House of Delegates .............................. 12  
MODELS ....................................................................................... 14  
Louis M. Brown Award for Legal Access ..................................... 14  
RESEARCH .................................................................................. 15  
MEMBERSHIP ............................................................................. 16
Message from the Chair

The mission of the ABA Standing Committee on the Delivery of Legal Services is to expand access to those of moderate incomes – those who have too many assets to qualify for legal aid or pro bono services, yet lack the resources to pay for full traditional legal services.

The Committee provides resource to the organized bar, non-profit organizations, the judiciary, practitioners and law schools to advance this mission. This Year in Review is among those resources. It is designed to help stakeholders broaden their understandings of the issues, identify others who are working in parallel paths and facilitate the conversations about increased avenues of access to legal services for those just beyond the poor.

The Report annotates articles from the legal press, bar publications and reports. It provides information about court rules, orders, guidelines and ethics opinions that were adopted in 2011. The Report also details information about policies supported by the Standing Committee, models promoted through the Louis M. Brown Award for Legal Access and research into public views on finding legal services. While the work of the Committee is presented, the Report highlights the work of many entities at all levels that share a dedication to improving access to justice through a wider conversation, policy decisions and programmatic advances. For further reference, the resources provided by the Committee are at www.americanbar.org/delivery.

The Committee anticipates and hopes the material in this Report will encourage and better enable those from every corner of justice system to further justice for all.

H. Ritchey Hollenbaugh
Chair
I. OUTREACH

Through the Delivery Committee website, which is routinely updated with articles, reports, ethics opinions, events and more, the Delivery Committee encourages the ABA, other bar association and legal groups to actively respond to the unmet legal needs for those of moderate income.

Articles

January 2011

- **ABA Journal: Sustaining Justice: 10 Experts Tell How Courts Can Do More with Less**
  The *ABA Journal* asked experts in the field to offer ideas about how the courts can deliver justice effectively during a time of fiscal austerity. Ideas presented include simplifying the civil process, a better use of technology, and allowing attorneys to assist self-represented litigants.

- **Wisconsin Inside Track: Legal Ghostwriting: What Lawyers Should Know About Drafting Documents Without Disclosure**
  Given the absence of state authority on ghostwriting, State Bar Ethics Counsel provides guidance for Wisconsin lawyers. Authority from other jurisdictions is drawn upon in suggesting such ethical guidelines.

March 2011

- **Wisconsin Inside Track: Demand for Limited Scope Representation is on the Rise; Supreme Court Studies Issue, Asks for Input**
  Article discusses the efforts of the Wisconsin Supreme Court Planning and Policy Advisory Committee (PPAC) to implement limited scope representation. Such representation is framed as being a method for closing the justice gap as more people are unable to pay for legal services in difficult economic times.

June 2011

- **The Advocate – NCBA: CYA Corner: Unbundled Service Does Not Mean Unnecessary Risks**
  Article discusses unbundled services. Member login is required to access.

July 2011

- **Oregon State Bar Bulletin: Unbundling Legal Services: Limiting the Scope of Representation**
  Article discusses some ethical issues surrounding unbundling, including the scope of, standards for, and consent for representation.
August 2011

- **Las Vegas Sun: Courts’ Self-Help Center has Aided 55,000 People**
  Article reports on the high-volume usage of the Court’s self-help center, which opened in December 2009. Such self help centers provide forms and assistance that make the process more efficient and ensures greater access to justice for people who cannot afford an attorney.

- **Huffington Post: Liberty and Justice for Some: State Budget Cuts Imperil Americans’ Access to Courts**
  Article reports on lag times in the court process, which are becoming increasingly common due to budget constraints. In order to deal with budget cuts, courts all over the country are having to freeze or reduce salaries, lay off staff, reduce operating hours, increase fines and fees, and leave positions for judges and support staff unfilled.

- **Wisconsin Inside Track: Lawyer à la carte: Expanded use of limited-scope representation on the horizon**
  Article discusses a recent report released by the Wisconsin Supreme Court’s Planning and Policy Advisory Committee, which identifies appropriate programming and initiatives for expanding limited scope representation in Wisconsin.

- **Washington State Bar News: Professionalism and the Pro Se Problem**
  Article discusses the ways in which the increase of pro se litigants challenges the efficiency of the court process. A number of justice initiatives that address these issues are discussed.

- **Law Practice Today: Expanding Your Practice with an Online Office**
  Article by Stephanie Kimbro considers what lawyers can do to integrate web-based technology to deliver legal services to the public. Prevalent structures of online delivery, types of legal services that best utilize this approach, and potential regulatory and ethical issues are discussed.

September 2011

- **NYSBA Journal: The Law Office of the Near Future: Practical and Ethical Considerations for Virtual Practice**
  Stephanie Kimbro discusses a number of issues that arise in virtual legal practices. Issues discussed relate to the following: confidentiality, avoiding the unauthorized practice of law in other jurisdictions, physical office address requirements, conflict of interest checks, establishing the attorney-client relationship, defining the scope of representation, determining the competency of a client, authenticating a client’s identity, supervising assistant lawyers and paralegals, and online client development and marketing.
• **The Colorado Lawyer: Ethical Considerations When Providing Unbundled Legal Services**
  Article discusses the need for limited scope representation and the ethical considerations for attorneys in providing these services. The Colorado Rules of Professional Conduct are explained and discussed.

• **The Montana Lawyer: New Limited-Scope Rules in Effect Oct. 1**
  New unbundling rules in Montana are described and discussed. Ethical concerns regarding the creating of a two-tiered justice system, the unauthorized practice of law, and the potential for increased risk to lawyers are addressed.

• **The Arkansas Lawyer: Many Lawyers, Yet the Unmet Need for Legal Services**
  Article discusses efforts to better match the supply of lawyers with the demand of people in need of legal services.

**October 2011**

• **The Baltimore Sun: Self-Help Center Expands Free Legal Services Statewide**
  Article discusses how a district court self-help center uses online and telephone assistance to expand services throughout the state of Maryland, increasing the population’s access to justice.

• **Connecticut Law Tribune: Two Ways To Cope With Judicial Budget Reductions**
  Article reports on the recent convening of the American Bar Association Task Force on the Preservation of the Justice System.

• **Illinois Bar Journal: Does Your Law Firm Need a Virtual Reality?**
  Article discusses Internet-based software innovations and their potential to help practitioners cut costs while expanding their client base. Logistics involved in making the transition from brick-and-mortar processes to online processes are explained.

• **GP Solo eReport: The Ethics of Unbundling**
  Stephanie Kimbro discusses the precautions law firms must take to ethically provide these services. The article raises a number of concerns to address in determining whether unbundling is appropriate and provides a step-by-step explanation of how to incorporate unbundling into one’s legal practice.
November 2011

- **The Colorado Lawyer: Limited Scope Representation Under the Proposed Amendment to C.R.C.P. 121 §1-1**
  Article addresses practical considerations for attorneys providing limited scope representation related to the Colorado Supreme Court’s proposed amendment. Considerations include service of process, communication with attorney or pro se party, and retainer agreements.

December 2011

- **Palm Beach Post: Yes, they’re real lawyers: Booth at Boynton mall peddles foreclosure advice**
  Article reports on a law booth that opened the prior month in Boynton Beach Mall. Such a nontraditional approach provides legal assistance outside of normal business hours, increasing access to the law for many people.

- **Ingham County Legal News: Unbundling Your Legal Services is Increasingly Popular**
  Article discusses Stephanie Kimbro’s book and the growing popularity of unbundling legal services.

Reports

April 2011

- **Kansas Courts: Report on Limited Representation Pilot Projects**
  The Report of Limited Representation Pilot Projects details the work of the Self-Represented Study Committee and its efforts to advance unbundling and self-help in Kansas.

May 2011

- **Joint Task Force on Limited Scope Legal Representation: Limited Scope Legal Representation**
  A report issued by the Illinois Joint Task Force on Limited Scope Representation promotes unbundling and recommends a number of rule changes.

August 2011

- **Wisconsin Supreme Court Planning and Policy Advisory Committee (PPAC): Subcommittee on Limited Scope Representation Feasibility Study and Recommendations**
  A report from the PPAC details the findings of a study conducted by the Subcommittee in Limited Scope Representation. The report includes findings
on the effectiveness of a number of court initiatives and detailed recommendations for implementing limited scope representation programming.

October 2011

- **Access Across America: First Report of the Civil Justice Infrastructure Mapping Project**
  A report by Access Across America provides a state-by-state portrait of services available to assist the U.S. public in accessing civil justice. The report details who is eligible for civil legal assistance, how it is produced and delivered, how eligible people connect with services, how such assistance is funded, and how these services are coordinated and regulated.

Books

- **Stephanie Kimbro: Serving the DIY Client: A Guide to Unbundling Legal Services for the Private Practitioner**
  Author, Stephanie Kimbro provides guidance on how attorneys may offer unbundled legal services.

Court Rules/Orders/Guidelines

January 2011

- **Supreme Court of Mississippi: Rule of Professional Conduct 1.2(c)**
  Changes were made to the Mississippi Rules of Professional Conduct to facilitate limited scope representation by attorneys as one means of addressing the unmet legal needs of low to moderate income people.

March 2011

- **Supreme Court of Montana: Rules of Civil Procedure 4.2, 4.3, and 11**
  Changes were made to the Montana Rules of Civil Procedure to facilitate limited scope representation by attorneys as one means of addressing the unmet legal needs of low to moderate income people.

- **Supreme Court of Montana: Rules of Professional Conduct 1.2, 4.2, and 4.3**
  Changes were made to the Montana Rules of Professional Conduct to facilitate limited scope representation by attorneys as one means of addressing the unmet legal needs of low to moderate income people.
May 2011

- Delaware’s Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants
  The Delaware Supreme Court adopted new guidelines to facilitate procedural fairness in the courtroom, particularly when one party is self-represented and one has an attorney.

September 2011

- Indiana Supreme Court: Rule of Trial Procedure 3.1
  The Indiana Supreme Court amended its Rules of Trial Procedure to facilitate temporary and limited scope representation by attorneys.

October 2011

- Colorado Supreme Court: Rule of Civil Procedure 121
  The Colorado Supreme Court amended its Rules of Civil Procedure to facilitate limited scope representation by attorneys.

November 2011

- United States Court of Appeals for the Second Circuit: In re Fengling Liu
  The U.S. Court of Appeals for the Second Circuit accepted limited scope representation by attorneys. Specifically, the Court found that the attorney’s ghostwriting did not constitute sanctionable misconduct.

Ethics Opinions

February 2011

- Formal Opinion No. 2011-183: Scope of Representation; Limiting the Scope
  Formal Opinion 2011-183 finds that limited scope representation is expressly allowed by Oregon RPC 1.2(b) and clarifies that an attorney may limit representation to certain actions or issues.

June 2011

- Informal Ethics Opinion EI-11-01: Legal Information Seminars
  Informal Opinion EI-11-01 discusses limited scope representation in the context of legal information seminars and clarifies the nature of the lawyer-client relationship in this context.
Events

February 2011

- **National Conference of Bar Presidents Midyear Meeting**
  The 2011 Midyear Conference of Bar Presidents was held on February 10-12 in Atlanta, Georgia. A workshop on using the Internet to provide legal services was offered titled “Virtual Lawyering: The Bar’s Role in Designing a New Business Model. Click [here](#) for handouts provided during the workshop.

April 2011

- **ABA TECHSHOW**
  On April 11-13, the ABA TECHSHOW presented information on technology and the legal field. Findings of a public opinion poll on how the public finds personal legal services were presented by the Standing Committee on the Delivery of Legal Services.

May 2011

- **ABA/NLADA Equal Justice Conference**
  The American Bar Association Standing Committee on Pro Bono and Public Service and the National Legal Aid and Defender Association held the annual Equal Justice Conference May 19-21 in Las Vegas, Nevada.

- **National Meeting of the Access to Justice Chairs**
  The annual meeting for the Access to Justice Chairs was held May 21 in Las Vegas, Nevada. A number of presenters discussed various topics related to expanding access to justice.

- **ABA National Conference on Professional Responsibility**
  The ABA held its 37th annual National Conference on Professional Responsibility June 2-4 in Memphis, Tennessee. Of note, a breakout session on virtual law practice, titled “The Future is Here: Ethical and Regulatory Implications of Virtual Law Practice” was held. Panelists included Will Hornsby, Randall DiFuntorum, Richard S. Granat, and Stephanie L. Kimbro.

August 2011

- **NCBP/NABE/NCBF Annual Meeting**
  The 2011 Annual Meeting of the National Conference of Bar Presidents, the National Association of Bar Executives, and the National Conference of Bar Foundations was held August 5-6 in Toronto, Ontario. The ABA presented information at a roundtable discussion on how the public finds legal services. The program began with an overview of the results of public opinion research undertaken by the ABA Standing Committee on the Delivery of Legal
Services and conducted by Harris Interactive in the fall of 2010. Click here for a report of the results of a public opinion poll.

October 2011

- **GPSolo Fall Meeting & National Solo and Small Firm Conference**
  The General Practice, Solo & Small Firm Division presented a conference on October 21st designed for new and experienced lawyers looking for substantive and practical programming. The ABA Standing Committee on the Delivery of Legal Services participated.

- **Futures Conference: Challenging the Law Practice Management Model**
  The 2011 Futures Conference was held October 28-29th at Chicago-Kent College of Law in Chicago. Several presenters discussed the use of technology in the delivery of legal services.

- **Symposium on Limited Scope Representation**
  The Connecticut Bar Foundation and the Connecticut Bar Association presented a symposium on Limited Scope Representation. The centered around the court’s ability to allow automatic withdrawal of a limited appearance once the terms of the limited agreement have been fulfilled. Additionally, the symposium explored proposed revisions to the Practice Book and the Rules of Professional Conduct. For more information, click here.

Initiatives/Programs

January 2011

- **Washington State Bar Association: Moderate Means Program**
  The Moderate Means Program, a partnership between the Washington State Bar Association and three Washington law schools, is a statewide reduced-fee lawyer referral services designed to increase access to justice for people of moderate means.

II. POLICY

Recommendations to the House of Delegates

After reviewing recommendations before the House of Delegates, the Delivery Committee co-sponsored the following items, each of which are consistent with the Committee’s mission to expand access to justice for those of moderate income:
2011 Midyear Meeting

- **Recommendation 109A** recommends the Uniform Partition of Heirs Property Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein. Action taken: approved.

- **Recommendation 109F** recommends the Uniform Collaborative Law Rules/Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as appropriate legislation for those states desiring to adopt the specific substantive law suggested therein. Action taken: withdrawn.

2011 Annual Meeting

- **Resolution 103C** urges the Department of Homeland Security to revise its policies so that detained parents, legal guardians, and primary caregivers of children have meaningful participation with their attorneys at judicial proceedings involving their children; and that those involved in family and juvenile courts be educated regarding the connection between state child welfare laws and immigration laws. Action taken: approved.

- **Resolution 104A** supports application of the Immigration and Nationality Act to allow persons outside the United States to pursue motions to reopen or motions to reconsider removal (deportation) proceedings on the same basis and subject to the same restrictions that apply to persons who file such petitions from within the United States. Action taken: approved.

- **Resolution 110B** supports rules or legislation for those states desiring to adopt the specific substantive law suggested therein. Action taken: not approved.

- **Resolution 120** urges Congress to amend the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA” or “the Act”), 38 U.S.C. §§ 4301-4335, by adding provisions to require employers to provide certain reasonable accommodations for returning veterans with combat injuries that may not manifest themselves until after a return to work. Action taken: approved.

- **Resolution 122** adopts the **ABA Standards for Language Access in Courts**, dated August 2011, and urges courts and other tribunals to give high priority to the prompt implementation of these Standards. Action taken: postponed indefinitely.

- **Resolution 123** adopts the **Model Time Standards for State Courts**, dated August 2011, and urges state judicial systems to adopt and implement the Standards. Action taken: approved as revised and amended.
III. MODELS

Louis M. Brown Award for Legal Access

The Louis M. Brown Award for Legal Access honors programs and projects dedicated to matching the unmet legal needs of the middle class and those of moderate incomes with lawyers who provide affordable legal information, services and representation.

The Award is presented annually to those who have made creative contributions to the delivery of legal services in ways that are exemplary and replicable. In 2011, the Delivery Committee recognized three programs.

2011 Brown Award Recipient:

Pinellas County Clerk of the Circuit Court Legal Self Help Center
The Self Help Center sets attorney appointments for a nominal fee of $1 per minute with a minimum of $15 and a maximum of $60. Fees paid by the litigants fund the Self Help Center attorneys and no person is turned away based upon income. In addition to setting attorney appointments, the Self Help Center also provides specialized software that assists in filling out forms, maintains and sells packets for civil court actions, provides notary services and processes copy requests.

2011 Brown Award Meritorious Recognition Recipients:

Arizona Foundation for Legal Services & Education and the State Bar of Arizona Modest Means Project
The partnership between Arizona’s Foundation for Legal Services & Education and the State Bar of Arizona Modest Means Project (MMP) assist individuals within the justice gap through LegalLEARN, a statewide legal services contact center. The contact center assists individuals making 250% or less of the Federal Poverty Guidelines with Bankruptcy, Consumer Law, Family Law, Housing, Guardianships and Wills & Trusts issues. The project provides 1 hour of brief assistance for $75. For continued assistance, the $75/hour fee continues. Callers receive an ID number and a list of attorneys working in the designated practice area.

Mauk & O’Connor, LLP
Founded in 2005, Mauk & O’Connor, LLP is a two-attorney law firm devoted exclusively to representation of families involved in special education disputes with local schools in northern Illinois. The firm is committed to assuring vigorous, comprehensive advocacy for parents and their disabled child, and seeks to maximize access to representation in meritorious cases by offering flexible fee and retainer policies. The business plan for the firm relies on recovery of attorney fees from the local school district as part of a settlement or after prevailing in a due process hearing before a state board of education hearing officer. The firm
has been successful over the past six years in two ways: first, in representing scores of low and moderate income families each year; and second, in sustaining the firm through recovery of attorney fees from school districts. More than 90% of firm revenue is received from school districts rather than the clients. Several legal organizations in the Chicago area have adopted this model to create or expand advocacy resources devoted to special education problems.

IV. RESEARCH

Public Opinion Poll Report

In 2010, the Delivery Committee commissioned Harris Interactive to conduct a public opinion poll to determine how consumers find legal services, as well as their awareness of unbundled legal services. In 2011, the Delivery Committee analyzed and summarized the findings into a report titled “Perspectives on Finding Personal Legal Services.” Findings were based on data collected in 2010 from 1,008 respondents from around the country by landline telephone calls. Demographics were weighted and the survey results were statistically significant.

In assessing how people find lawyers for personal legal matter, the survey set out to assess two factors: the percentage of people who would rely on a trusted source and whether there was a movement away from print directories toward online information. The survey indicated that 80 percent of respondents would turn to a trusted source, with 20% turning to impersonal sources. These percentages were comparable to those from similar surveys conducted in 1990. With regard to the latter factor, few people indicated they would turn to either print directories or online searches as their primary way of finding a lawyer. Online models to connect people with lawyers were not greatly popular overall, with less than half reporting that they were likely to use any model. However, models with consumer ratings, those that provide online answers to questions and traditional websites were more highly rated than Web 2.0 models such as blogs, social networking sites and Twitter.

A large percentage of people reported they were unfamiliar with unbundled legal services, sometimes known as limited scope representation. Seventy percent were not at all familiar with the concept and only 11 percent were somewhat or very familiar with it. Nevertheless, people were interested in unbundling as an alternative, with two-thirds reporting that they were interested in discussing unbundling with their lawyer and would take into account a lawyer’s willingness to unbundle services when deciding who to use for a personal legal matter.

Finally, the survey looked at resources people would use if they proceeded without a lawyer. The top tier included judges, self-help centers and free online sources, while people were very unlikely to turn to paid online sources.
STANDING COMMITTEE ON THE DELIVERY OF LEGAL SERVICES
MEMBERSHIP, 2011

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