Massachusetts: Hearings and Report on Barriers to Access to Justice

By Gerry Singsen
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The Massachusetts Access to Justice Commission was created by the Supreme Judicial Court (SJC) to coordinate our complex civil justice community, encourage legal aid programs to come to grips with problems in the delivery system, periodically assess the state of access to justice in the Commonwealth, promote improvements in the justice system and educate the public about access to justice. Unlike commissions in many other states, the Massachusetts’ Commission is not leading state efforts to raise appropriations; that role has been ably led for years by the Massachusetts Legal Assistance Corporation and its Equal Justice Coalition.

In 2006 – 2007, the Commission held four hearings on “barriers to access to justice,” one in each of the state’s four regions. The hearings were organized in conjunction with legal aid providers. Witnesses were invited to describe barriers in the courts and in the community, and to suggest remedies. Judges, court staff, bar leaders, representatives of community organizations, social service providers and government agencies, clients, legal aid staff and board members, and elected officials all testified. The Massachusetts Trial Court Department provided courtrooms, security and stenographic assistance. Most members of the SJC attended at least one of the hearings.

The hearings revealed many barriers, and many suggestions for how to overcome them. In June 2007, the Commission delivered its forty-seven page report, including forty-five recommendations, to the SJC. The recommendations begin with broadening the right to counsel in civil matters such as evictions, contempt charges that may lead to incarceration and revocation of the parole-like status of a juvenile delinquent. The Commission recommended that the SJC redefine unauthorized practice to allow non-lawyers who work with battered women or tenants to speak in court.

Other recommendations for help to self-represented litigants deal with such topics as ghostwriting, unbundling, consumer service centers, coordinators in the trial courts, allowing court personnel to provide more assistance, and establishing an access to justice coordinator in the Trial Court.

Another recommendation urges the District Courts to adopt best practices initially developed in the specialized Housing Courts and Probate and Family Courts. There are also recommendations to the Legislature (e.g., adopting the Uniform Probate Code including a right to counsel in guardianship proceedings and, of course, increasing appropriations for legal services), to the bar and to administrative agencies and police departments.

Initial response to the Report was mostly positive. Commission Chair Herbert P. Wilkins, retired Chief Justice of the SJC, has led the effort to encourage adoption of the recommendations by the seven divisions of the Trial Court. Three Chief Justices offered comments on the report to Commissioners in chambers, while the other four (District Court, Juvenile Court, Probate and Family Court, and Housing Court) made their comments to full meetings of the Commission.

A Boston Bar Association Task Force, with strong Commission and state bar participation, is working on broadening the right to counsel in civil matters. Many of the specific recommendations are being studied or taken up by those to whom they are directed. There is much yet to be done.

1 Gerry Singsen is a consultant to legal aid organizations, managers and staff. A legal aid lawyer since 1968, Gerry’s roles in the community have included Vice President at the Legal Services Corporation, Project Director, trainer, program assessor and author. For a decade he was a lecturer at Harvard Law School, where he directed the Ford Foundation-funded Interuniversity Consortium on Poverty Law. Gerry can be reached at gerrysings@aol.com.

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with this pro bono effort. Without the Commission’s presence and urging, it is doubtful if the State Bar or the Supreme Court would have been moved to suggest such a comprehensive approach.

1 Sarah M. Singleton, a shareholder of Montgomery & Andrews, P.A., in Santa Fe, New Mexico, is a member of the board of directors of the Legal Services Corporation and Co-Chair of the New Mexico Access to Justice Commission, which she played a leading role in creating. She is a former president of the State Bar of New Mexico.

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of Portland, Oregon, Elizabeth currently is a consultant to Legal Aid programs and other progressive nonprofits.

2 Research results and tool kit components available on-line at http://www.nlada.org/News/News_Education

3 Identifying target audiences, developing messages that appeal to audience values, choosing audience-appropriate messengers and tactics, etc.

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Cruelty Prevention, and the Colorado Network to End Financial Exploitation of the Elderly. She is the 2003 recipient of the Carolyn Hamil-Henderson award given by SafeHouse Denver to individuals who make significant contributions to building community awareness about domestic violence and helping to stop future abuse. While a prosecutor for the City of Aurora, she spearheaded the development and implementation of the Aurora domestic violence response, the first fast track criminal prosecution program in the nation. She writes and teaches nationally and internationally on the subject of domestic violence, workplace violence, and violence against women. She is also a trained mediator, and received 2002 and 2003 mediator of the year in the area of domestic relations and parental responsibility from Jefferson County Mediation Services. She has served on the Board of Director of several organizations including SafeHouse Denver and the Colorado Women’s Bar Association. She received her JD from the University of Oregon. Kathleen may be reached at kschoen@cobar.org.

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2 Because of the focus on barriers, the testimony did not emphasize the many efforts of our courts to improve access to justice.

3 Barriers to Access to Justice in Massachusetts: A Report, With Recommendations, to the Supreme Judicial Court, June 2007. The report can be found at www.mlac.org/accessojusticereport and at www.ATJsupport.org (search under Massachusetts on “Documents and Resources” page).

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1 Hon. Kathleen E. O’Leary was appointed Associate Justice for the California Court of Appeal, Fourth Appellate District, Division Three (Santa Ana) in 2000, after having served on the Orange County trial court since 1981. She currently chairs the Judicial Council’s Task Force on Self-Represented Litigants and the Court Interpreters Advisory Panel. In 2007, she received the Benjamin Aranda Access to Justice Award in recognition of her long term commitment to equal access in the California courts.

2 Geoffrey L. Robinson is past chair of the California Commission on Access to Justice, and now chairs its Language Access Committee. He was the primary author of the Commission’s 2005 report, “Language Barriers to Justice in California.” He is a partner with Bingham, McCutchen, in their Walnut Creek, California office. He is the recipient of the firm’s first John J. Curtin Public Service Award and the California State Bar’s President’s Pro Bono Award.

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tory dues fee, half of which goes to legal services. Finally, they were very involved in the successful effort to obtain an IOLTA comparability rule in 2006, which is generating millions of additional dollars for legal services.

1 Meredith McBurney, a consultant since 1997, specializes in resource development for legal services and other advocacy organizations. She currently serves as Resource Development Consultant for the American Bar Association’s Resource Center for Access to Justice Initiatives and Management Information Exchange. From 1981 to 1997, she was the Executive Director for Colorado’s IOLTA program and statewide fundraising organization. Before that, she was the administrator for Colorado Rural Legal Services. Meredith may be reached at meredithmcburney@msn.com.