

WSBA REPORT

ACCESS TO JUSTICE TASK FORCE

1992-1993

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I. ISSUES

A. Access to Justice Tops Our Priorities

The Washington State Bar Association's 1989-1990 Long-Range Planning Committee chaired by William H. Gates, Sr. identified access to justice as the number one issue facing the Bar. The Committee pointed out that the public and lawyers alike have a vested interest in the system working. If the legal needs of all people cannot be addressed, then the system as we know it will break down.

The 1989-1990 Long-Range Planning Committee's report tracked earlier recommendations made by two State Bar Pro Bono Task Forces and by the Bar's Legal Aid Committee in 1985 and 1988 reports, all of which found massive and growing unmet civil legal needs among low income people in Washington.

B. Access to Justice Is a Constitutional Right

Supreme Court Justice Robert F. Brachtenbach, 1991, wrote that the right of access to courts is inherent in our court system. John Doe v. Puget Sound Blood Center, 117 Wn.2d 772 (1991).

C. Need for Coordination of Access to Justice Organizations

The now famous Ada Shen-Jaffe circle chart (Exhibit 1) illustrates the many different organizations, agencies, and private attorneys involved in providing services to low and moderate income citizens. Despite efforts to coordinate delivery of services, the level and extent of activities is so broad and diffuse that it is impossible to coordinate. As a result, competition for grants or budget dollars occurs. Further, access to justice efforts in this state have been accused of "lurching," "churning," and suffering from a lack of continuity, coordination, and organization. The 1989-1990 Long-Range Planning Committee recommended that there be a "traffic cop" entity to assist in coordinating all of these activities.

D. Need for Continuity and Focus

Those active in the delivery of services to the low and moderate income population of the state recognized the need for a "beacon" as a focal point for access to justice activities. The need exists for an institutionalized entity to provide a forum to address the difficult problems of access to justice, to develop and implement strategies and solutions and to provide a centralized place where access to justice activity can be coordinated, grow and thrive. The institutionalized entity should be within the Bar to serve as a role model of public service and as a hallmark of professionalism.

II. 1992-1993 TASK FORCE PURPOSE, ORGANIZATION, AND COMPOSITION

A. Task Force Established

To address the issues previously identified, successive presidents Joe Delay and Steve DeForest and the Board of Governors established the Washington State Bar Association 1992-1993 Access to Justice Task Force. This Task Force was not to study access to justice problems, but had a very specific purpose. The Task Force was directed to spend one year: a) planning for coordination of services and resources; b) establishment of WSBA's standing Access to Justice Committee, super-committee or department; c) development of a directory of services; d) sponsoring an access to justice conference; e) studying the financial impact of all proposals.

B. Term and Funding

The Task Force was given a one-year term with meetings approximately every two months. Because of severe budget constraints, organizations involved in the access to justice field were asked to fund representatives to the Task Force.

C. Staffing

Because of severe budget constraints on the part of the Bar Association and in recognition of the need, Barbara C. Clark, Executive Director of the Legal Foundation of Washington, volunteered to serve as the staff person for the Task Force.

D. Membership and Representation

- 1) Legal Foundation of Washington -
Barbara Clark, Executive Director
James Fearn, Past President
- 2) LAW Fund -
Lauren Moore, Executive Director
- 3) Federally Funded Legal Services Organizations -
 - a) Evergreen Legal Services -
Ada Shen-Jaffe, Director
 - b) Puget Sound Legal Assistance Foundation -
John C. Purbaugh, Executive Director
 - c) Spokane Legal Services -
James A. Bamberger, Director

- 4) Washington State Bar Association Board of Governors -
Thomas J. Chambers, Chair - Access to Justice Task Force
Michael A. Larson
Jan Eric Peterson
- 5) Judiciary -
Judge Susan Agid, Court of Appeals
Judge James D. McCutcheon, Jr., Superior Court
- 6) Washington State Pro Bono Network -
Cheryl Boal
- 7) King County Bar Association -
Joan Andersen, Director of Community Legal Service
- 8) Northwest Women's Law Center -
Kimberly Reason
June Krumpotick
- 9) Washington State Legislature -
Marlin J. Appelwick, State Representative and Chair, House Judiciary Committee
- 10) ADR Section -
Diane Fitz-Gerald
Ted Hunter
- 11) Family Law Section -
Kimberly Prochnau
Howard Marshack

12) Legal Aid Committee -

Mary Ruth Mann
Marla Elliott
E. Bronson Potter

13) Interested Bar Leaders -

Paul Bastine
Lowell Halverson
Paul Stritmatter
George Zweibel

14) Washington State Law Library -

Deborah Norwood, Director

15) Washington State Bar Association Staff -

Mary Elizabeth St. Clair, Public Affairs Director
Jo Rosner, Pro Bono Coordinator

16) Prepaid Legal Services Committee -

Paul W. Robben

17) Young Lawyers Division -

Ruth Edlund

III. TASK FORCE WORK

A. Focus on Task

The Task Force was composed of many bright, talented, articulate and dedicated individuals, many of whom had specific agendas to accomplish. It was a pleasure and a challenge for the chair to keep all of the talent focused on the tasks at hand. It was decided that the first order of business would be to establish a single standing Access to Justice Committee, super-committee or department and to study the financial impact of that proposal.

B. Function of Entity

Before addressing a model, it was necessary for the Task Force to identify exactly what functions and purposes the entity would have before the Task Force could sculpt a model. Although subsequently refined, the following objectives for the entity were initially identified.

- 1) develop effective approaches to coordinating civil access to justice activities and foster the development of a statewide, integrated civil legal services delivery system;
- 2) serve as a repository of information relating to civil legal services issues;
- 3) establish substantive standards for delivery of civil legal services in Washington state;

- 4) develop and implement policy initiatives designed to expand access to justice opportunities for low and moderate income residents of the state of Washington;
- 5) sponsor and facilitate an annual conference of civil legal services providers and those involved in civil access to justice activities;
- 6) secure adequate funding for civil access to justice activities; and
- 7) develop and implement new programs designed to expand access to justice opportunities.

C. Bar Association Committee Versus Totally Independent Entity

Those who have toiled in the access to justice fields for decades were understandably concerned about the creation of a super "traffic cop" coordinating entity under the auspices of the Washington State Bar. The concern was based upon the changing faces that occupy the Bar Board of Governors and staff positions. The political tides can ebb and flow for access to justice issues based upon the political makeup of the Board and staff. However, ultimately a consensus was reached that it was important to have the coordinating entity within the ambit of the Bar because the Washington State Bar Association is best able to provide continuity and the stature which the entity would need to command the respect and cooperation from all access to justice participants.

Considerable debate focused on these issues. It became apparent to all that individual turf issues could be overcome and a consensus developed only if a delicate balance could be

achieved which would permit the entity to operate within, cooperate with and yet be independent from the Washington State Bar Association. Subsequent debates on representation, terms of office, funding, and the like, were focused on preserving an appropriate balance between dependence upon and independence from the Bar.

D. Organizational Models

The Task Force discussed models ranging from a department within the Bar Association to a cooperative of subcommittees. ABA and California models were discussed. Judy Garlow, Acting Director of the Legal Services Trust Fund (IOLTA) of California, attended one meeting.

The Task Force focused on two potential models. The first was based upon the California Standing Committee on Access to Justice (SCATJ). The proposal would have co-chairs appointed by the Board of Governors to serve renewable three-year terms and would be composed of seven to nine members serving three-year terms, renewable by appointment of the Board of Governors. SCATJ would establish subcommittees; examples would be 1) pro bono; 2) civil legal services for the poor; 3) special populations with special needs; 4) alternative dispute resolutions; 5) indigent defense; 6) standards for providers of legal services for the poor. It would be the vehicle through which all access to justice kinds of activities would pass to the Board of Governors and would report annually to the Board.

The second model would be an independent board modelled after the Bar's Continuing Legal Education Board. This board would be composed of nine members appointed by the Supreme Court and the Board of Governors for three-year terms. WSBA would be responsible for the costs of staffing and financial support would also come from the Washington Legal Foundation. The Board would be responsible for handling all access to justice issues as delegated by the Washington State Bar Association and the Supreme Court.

In discussing the two models, it became apparent that the only real difference between the two models was that one was an independent board, whereas the other was a standing committee within the Bar Association. No consensus was readily reached, and a melding of the two models was ultimately accomplished.

E. Supreme Court Support

The Task Force felt that support and even leadership from the Supreme Court would be necessary to the success of the Access to Justice Board. Task Force representatives Mike Larson, James Fearn and Ada Shen-Jaffe met with the Supreme Court's Administrative Committee on April 27, 1993. The Administrative Committee is composed of Chief Justice James A. Andersen, Justice Barbara Durham, Justice Charles Z. Smith, and Justice Robert F. Brachtenbach. A presentation was made to the Supreme Court regarding the development of an independent board to coordinate access to justice, and the Supreme Court expressed its encouragement and receptiveness to the work of the Task Force.

IV. TASK FORCE RECOMMENDATIONS

A. Create Access to Justice Board

1. Establishment of Board

The Access to Justice Board shall be established.

2. Purpose

The purpose of the Access to Justice Board is to assure access for low and moderate income residents of the State of Washington to the civil justice system through the delivery of quality legal services. The Board will serve as an effective, efficient, and enduring mechanism for coordinating and developing activities, and to develop and implement policies and initiatives that will enhance, improve and strengthen civil access to justice for low and moderate income residents of the State of Washington.

3. Objectives

The Access to Justice Board objectives shall include but not be limited to the following:

- Secure adequate funding for civil access to justice activities;
- Develop effective approaches to coordinating civil access to justice activities and fostering the development of a statewide, integrated non-duplicative, civil legal services delivery system;
- Serve as a repository of information relating to civil legal services issues;
- Establish substantive standards for the delivery of civil legal services in Washington state;
- Develop and implement policy initiatives and criteria which enhance the availability of resources and fosters use in a manner which targets areas of greatest and most compelling need designed to expand access to justice opportunities for low and moderate income residents of the state of Washington;
- Address existing and proposed laws, regulations, ordinances, rules and policies in the public and private sectors which may increase or decrease meaningful access to justice for low and moderate income persons.

- Sponsor and facilitate an annual conference of civil legal services providers and those involved in civil access to justice activities;
- Develop and implement new programs designed to expand access to justice opportunities.

4. Affiliation

The Access to Justice Board is to be an independent body operating under the auspices of the Washington State Bar Association in accordance with the authority granted by GR 12(a).

5. Appointment of Members and Term of Membership

Members of the Access to Justice Board will be nominated by the Washington State Bar Association Board of Governors and approved by the Supreme Court. Each member will serve for a term of three years, renewable for a second three-year term. The terms will be staggered, to limit the number of experienced members whose terms will expire in any given year. The Task Force recommends that individuals appointed to initial one-year terms be eligible to serve two additional three-year terms.

6. Size and Composition of Access to Justice Board

The Access to Justice Board will consist of nine (9) members. There will be one representative from each of the following organizations/entities: 1) a designee of the Board of Judicial Administration; 2) the Washington State Bar Association Board of Governors; 3) the Legal Foundation of Washington; 4) the federally-funded legal services programs of Washington state; and 5) the Washington pro bono community. The remaining members will be appointed on the basis of a demonstrated commitment to, and familiarity with, civil access to justice issues, and at least two will be lay persons of low or moderate income. The Task Force recommends that efforts be made to insure that membership of the Board reflects ethnic, gender, geographic and other diversity. It is recommended that the Board of Governors allow represented organizations to recommend their own candidates to the Board of Governors.

7. Selection of Chairs and Vice-Chairs

Immediately upon appointment, the members of the Access to Justice Board shall select a chair and chair-elect. The chair shall serve a two-year term and be succeeded by the chair-elect upon conclusion of the chair's term. In the event that the term of the chair or chair-elect should expire prior to the completion of the chair or chair-elect's term, that person shall continue to serve until the term expires, even though the effect is to increase the number of members of the Board for that time.

8. Staffing

The Access to Justice Board initially should have two full-time staff members. Staff will administer and advise all Board and committee-related activity and will be responsible, within the general responsibilities delegated by the Board, to develop, implement, and oversee policy initiatives, and serve as liaison between the Board and members of the legal community, justice system, and community-at-large on civil access to justice matters.

9. Committees

The Board may establish such committees as it deems appropriate under the general oversight of the Access to Justice Board. Committees should be established with the goal of being comprehensive and eliminating redundancy. Committees should include non-members of the Board. The Task Force recommends efforts be made to ensure that the membership on committees include a lay person, and that consideration be given in appointment to ethnic, gender, geographic, area of law and practice, and other diversity.

• Committee on Civil Legal Services for the Poor

Functions include: Policy development and implementation on matters affecting the coordination and delivery of civil legal services for the poor; identification and coordination of organizations involved in delivery of civil

legal services to low income residents of Washington state; monitoring the effectiveness of the civil legal services delivery system.

- **Committee on Volunteer Attorney Involvement**

Functions include: Support and assistance in the development and operation of volunteer attorney (pro bono) programs, including local bar programs; development and implementation of generalized standards for the operation of volunteer attorney direct representation programs; development of new and innovative opportunities for volunteer attorneys to meaningfully contribute to serving the unmet civil legal needs of low and moderate income residents of Washington state.

- **Committee on Alternate Dispute Resolution**

Functions include: Assessing and evaluating ADR possibilities on matters of general concern to low and moderate income litigants; developing and testing new ADR programs of significance to low and moderate income litigants.

- Committee on Resource Development

Functions include: Developing new and expanded resources to support civil access to justice initiatives; coordinating ongoing resource development initiatives.

- Committee on Overcoming Impediments to Access to the Justice System

Functions include: Identifying and developing strategies to overcome legislative, administrative, and judicial rules, practices, and procedures that serve as barriers to civil access to justice for low and moderate income residents of Washington state. Developing new strategies to expand opportunities for low and moderate income residents of Washington state to obtain meaningful access to the civil justice system.

- Committee on Lawyer Referral Activities

Functions include: Monitoring the operation and development of programs designed to provide attorney referral services for low and moderate income people. Developing and overseeing common standards for lawyer referral program operations.

- Committee on Law School Clinical Legal Program Development

Functions include: Monitoring the development and operation of civil legal clinics at the three law schools in the state and developing programs and standards to effectively integrate these programs into an overall statewide civil legal services delivery system.

10. Elimination of Committees

The Task Force recommends that upon establishment of the Access to Justice Board, that the Board of Governors eliminate committees which may duplicate the Board's activities, such as:

- The Access to Justice Task Force
- The WSBA Legal Aid Committee
- WSBA Board Liaison to Evergreen Legal Services
- WSBA Pro Bono Coordinator

11. Funding and Other Support

Funding for the Access to Justice Board will be provided by the Washington State Bar Association which may seek co-sponsorship from the Legal Foundation of Washington, and other appropriate sources. The Board's offices will be located within the offices of the Washington State Bar Association, such office space to be provided in-kind by the Bar. To the extent practicable, the WSBA will make its staff, meeting rooms, equipment and other resources available to support the activities of the Board. The Board may, in its discretion, contract with the WSBA for the provision of payroll, benefits, and other essential administrative services.

12. Annual Reports

The Access to Justice Board will report annually to the Supreme Court, the Washington State Bar Association Board of Governors, and cosponsors such as the Legal Foundation of Washington.

V. BUDGET

A. WSBA & LFW Cosponsorship

Access to justice for low and moderate income Washington residents is a focal responsibility of both the Washington State Bar Association and the Legal Foundation of Washington. The Task Force recognizes that both the Bar and the Legal Foundation are facing nearly unprecedented financial constraints. It is, therefore, incumbent upon both bodies to enter into a cosponsorship agreement to establish the Access to Justice Board. The Task Force recommends that the Bar and the Legal Foundation enter into an agreement to share the expenses of the Access to Justice Board equally.

1. Budget and CLE Model

The Task Force recommends an initial budget of \$90,000. This budget is based upon the Continuing Legal Education Board budget, which most nearly correlates to the Access to Justice Board model. That budget, which is detailed in the following page, provides the salary for approximately 30% of a full-time senior staff person's time and one full-time staff person (or the full-time equivalent of one staff person from other staff). It also provides for \$6,000 in Board expenses, \$2,500 for printing, and \$2,500 for postage. The Task Force urges increasing the budget to provide for two full time staff persons as soon as practical.

VI. AMENDMENT TO GR 12 ACCESS TO JUSTICE BOARD

A. Purpose

Low and moderate income residents of the State of Washington should be assured of access to the civil justice system through high quality legal services. The Access to Justice Board will serve as an effective, efficient, and enduring mechanism for coordinating and developing activities, and to develop and implement policies and initiatives that will enhance, improve and strengthen civil access to justice.

B. Access to Justice Board

There is hereby established an Access to Justice Board (Board) consisting of nine members nominated by the Board of Governors of the Washington State Bar Association and appointed by the Supreme Court, consisting of representatives from the following: Board of Judicial Administration, Washington State Bar Association Board of Governors, Legal Foundation of Washington, federally-funded legal services programs of Washington state, and the Washington pro bono community. The remaining four members will be appointed on the basis of a demonstrated commitment to, and familiarity with, access to justice issues; at least two will be lay persons of low or moderate income. Efforts shall be made to ensure that the membership of the Board reflects ethnic, gender, geographic, and other diversity. The Board shall designate one member as chairperson of the Board who shall serve a term

of two years and who shall be eligible for reappointment for one additional 2-year term. Of the Board members first appointed, three shall be appointed for 1 year, three for 2 years, and three for 3 years. Thereafter, appointments shall be for a 3-year term. Board members shall be eligible for reappointment for one additional term. Those individuals appointed to the initial one-year term may serve two additional three-year terms. Terms shall end on September 30 of the applicable year.

C. Powers and Duties of the Board

1) The Board shall work to secure adequate funding for civil access to justice activities; coordinate civil access to justice activities and foster the development of a statewide, integrated, non-duplicative, civil legal services delivery system; serve as a repository of information relating to civil legal services issues; establish substantive standards for the delivery of civil legal services; develop and implement policy initiatives and criteria which enhance the availability of resources; conduct an annual conference of civil legal services providers and others; develop and implement new programs designed to expand access to justice opportunities; address existing and proposed laws and regulations which may affect meaningful access to justice. The Board may adopt rules pertinent to these powers and duties, subject to approval of the Supreme Court.

2) The Board may establish standing and special committees to carry out its duties and purposes.

D. Expenses of the Board

The Board shall submit an annual budget to the Board of Governors. The Board of Governors may enter into agreements with other funding sources in implementing the Board's budget. The Bar Association shall furnish the Board with the necessary office space, staff, and clerical help to carry out its duties.

E. Annual Report

The Board will report annually to the Supreme Court, the Board of Governors of the Washington State Bar Association, and any other funding sources.