

# Maryland Legal Services Corporation: Promoting Equal Access to Justice

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## MARYLAND LEGAL SERVICES CORPORATION: PROMOTING EQUAL ACCESS TO JUSTICE

ROBERT J. RHUDY\*

Beginning in 1982, Maryland Legal Services Corporation (MLSC) has built upon Maryland's rich legacy of providing legal assistance to low-income populations in civil matters. Civil legal aid in Maryland has expanded significantly over the past twenty-five years through a diverse network of funders, providers, and service-delivery mechanisms. While there is much to celebrate in the work of Maryland's access to justice<sup>1</sup> partners, many legal problems and needs continue to go unmet.

This article first briefly describes Maryland's civil legal aid system prior to the creation of the MLSC in 1982. Second, it discusses the creation of the MLSC, its purposes, responsibilities, and activities. Third, the article reviews the findings and recommendations of the 1988 MLSC Advisory Council on Legal Services to Maryland's Poor, which spurred further development of legal aid programs in Maryland. Fourth, the article compares the state of Maryland legal aid services as existed prior to the study, with those that exist presently; it also discusses the role that Maryland's judicial leadership has played in expanding support for Maryland's legal aid and access to justice. Fifth, the article concludes with a review of continuing challenges to the development of equal access to justice in Maryland and a discussion of recent efforts undertaken to make equal access a reality.

This article was prompted by the morning panel presentations at the University of Maryland School of Law's Journal of Race, Religion, Gender and Class's *Maryland Legal Services Corporation 25th Anniversary Symposium: Recognizing Twenty-Five Years of*

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1. The author uses the terms "access to justice" and "legal aid" throughout this article. "Access to justice," means the ability of a litigant to effectively present claims and defenses to a court or other dispute-resolution mechanism. "Legal aid," means the assistance that a lawyer or other trained advocate provides to a litigant to help that person obtain access to justice. "Legal aid" includes, among other services: information, advice, research, drafting, oral communications, and representation in negotiations, pre-trial motions, at trial or administrative hearings, and on appeal. The provision of legal aid is not the only means to promote access to justice. Other key actors—including the judiciary, clerks, mediators, and other governmental agencies—provide essential "access" assistance as well. Nor should "access to justice" be seen as the only mission of legal aid providers. They provide important assistance to clients and others through planning, conflict prevention, client education, public policy advocacy and other services. BLACK'S LAW DICTIONARY 912 (8th ed. 2004).

*Accomplishments and Setting an Agenda for the Future* held on October 11, 2007.<sup>2</sup> The morning panel—chaired by the author— included presentations by Wilhelm Joseph, Executive Director of the Maryland Legal Aid Bureau, Inc.; Sharon Goldsmith, Executive Director of the Pro Bono Resource Center of Maryland; Brenda Blom, Director of the Clinical Law Program at the University of Maryland School of Law; and Pamela Cardullo Ortiz, Executive Director of the Family Administration, Maryland Administrative Office of the Courts. The panel presentations focused on Maryland civil legal services activities of staff attorneys, pro bono work, law school clinics, and court-supported assisted pro se programs. The afternoon presentations discussed the re-establishment of a reduced-fee, private attorney legal aid program (“Judicare”), litigation efforts to establish a Maryland “civil Gideon” publicly-funded right to counsel in certain civil matters, and rule changes to promote increased interest on lawyer trust account (IOLTA) revenues for legal aid funding.<sup>3</sup>

## I. LEGAL AID IN MARYLAND BEFORE 1982

This section briefly describes the major components of the civil legal aid system, as a foundation for discussing its development following the creation of the MLSC in 1982.

The Maryland Legal Aid Bureau (LAB) is Maryland’s oldest and largest civil legal aid program, providing services primarily through full-time, salaried staff attorneys and paralegals.<sup>4</sup> LAB began in 1911 as a program sponsored by Baltimore’s Federated Charities before becoming an independent nonprofit organization in 1929.<sup>5</sup> LAB served as a placement for University of Maryland School of Law

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2. MD. L.J. RACE, RELIGION, GENDER & CLASS, Maryland Legal Services Corporation 25th Anniversary Symposium: Recognizing Twenty-Five Years of Accomplishments and Setting an Agenda for the Future (October 11, 2007), *podcast available at* [http://www.law.umaryland.edu/academics/journals/trgc/past\\_symposia.html](http://www.law.umaryland.edu/academics/journals/trgc/past_symposia.html) [hereinafter MLSC 25th Anniversary Symposium].

3. In December 2007, the Maryland Court of Appeals adopted an “IOLTA Comparability Rule” that requires Maryland attorneys to place their IOLTA-eligible funds in financial institutions that paid interest on such deposits at rates comparable to that paid on other similarly sized accounts. Liz Farmer, *Top Court Adopts IOLTA Compatibility Rules*, DAILY REC., Dec. 3, 2007.

4. See Michael A. Millemann, *Diversifying the Delivery of Legal Services to the Poor by Adding a Reduced Fee Private Attorney Component to the Predominantly Staff Model, Including Through a Judicare Program*, 7 U. MD. L.J. OF RACE, RELIGION, GENDER & CLASS 227 (2007) [hereinafter *Millemann Report*].

5. See Maryland Legal Aid, Inc., ([http://www.mdlab.org/Brief\\_History](http://www.mdlab.org/Brief_History)) (last visited Feb. 18, 2009).

students during the 1930s; and in 1940, LAB—along with members of bar in private practice—formed a joint committee to discuss and determine how to increase access to legal aid by referring cases to members of the private bar.<sup>6</sup>

Operating through charitable contributions and limited Baltimore City funding and support, LAB was principally a Baltimore program throughout its first half-century.<sup>7</sup> In 1966, LAB began receiving funding from the United States Office of Equal Opportunity's Legal Services Program (OEO) that was created in 1964 to provide grants to local legal aid offices throughout the United States and its territories.<sup>8</sup> Due to the aid of these federal dollars, by 1971 LAB had added offices in Anne Arundel, Carroll, and Harford Counties.<sup>9</sup>

The United States Congress created the Legal Services Corporation (LSC) in 1974 as successor to the OEO Legal Services Program.<sup>10</sup> Between 1975 and 1981, LSC's annual budget expanded from \$71 million to \$321 million.<sup>11</sup> With the infusion of LSC funding, LAB became a statewide service organization by 1980, adding offices in the Eastern Shore; Western Maryland; and Baltimore, Montgomery, and Prince George's Counties.<sup>12</sup> By the early 1980s, LAB had approximately one hundred attorneys on staff and served over twenty thousand clients annually in a range of civil matters.<sup>13</sup> While most of LAB's resources historically had been allocated to providing advice,

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6. See BRENNAN CTR. FOR JUSTICE AT N.Y.U. SCH. OF LAW, MAKING THE CASE: LEGAL SERVICES FOR THE POOR—A CLOSE LOOK THROUGH THE LENS OF THE MARYLAND LEGAL AID BUREAU 5–6 (1999), [http://brennan.3cdn.net/27538621c6c022b303\\_rtm6b3ljj.pdf](http://brennan.3cdn.net/27538621c6c022b303_rtm6b3ljj.pdf) [hereinafter BRENNAN CENTER FOR JUSTICE]; see also Robert J. Rhudy, *MLSC Continues a Tradition of Aid to the State's Poor*, THE DAILY REC., May 2, 1988, at B12 [hereinafter Rhudy, *MLSC Continues*].

7. *Id.*

8. *Id.*

9. *Id.*; see also Alan W. Houseman & Linda E. Perle, SECURING EQUAL JUSTICE FOR ALL: A BRIEF HISTORY OF CIVIL LEGAL ASSISTANCE IN THE UNITED STATES (Center for Law and Social Policy 2007), available at [http://www.clasp.org/publications/legal\\_aid\\_history\\_2007.pdf](http://www.clasp.org/publications/legal_aid_history_2007.pdf). The Office of Economic Opportunity was created pursuant to the Economic Opportunity Act of 1964 to administer federal anti-poverty programs. *Id.*; Economic Opportunity Act of 1964, Pub. L. 88-452, 78 Stat. 508. Legal Services was added to the Economic Opportunity Act Amendments of 1966, leading to the creation of the OEO Legal Services Program. Houseman & Perle, *supra* note 9; Economic Opportunity Amendments of 1966, Pub. L. 89-794.

10. Legal Services Corporation Act of 1974, Pub. L. No. 93-355, 88 Stat. 378 (codified at 42 U.S.C. § 2996 (1994)).

11. Houseman & Perle, *supra* note 9, at 24.

12. See BRENNAN CTR. FOR JUSTICE, *supra* note 6, at 7–8; see also Rhudy, *MLSC Continues*, *supra* note 6, at B15.

13. *Millemann Report*, *supra* note 4.

counsel, and representation in individual client case services, the organization had a very rich and successful record of law reform and policy advocacy activities.<sup>14</sup> This success was achieved through the use of class actions, appellate advocacy before state and federal courts, including several successful United States Supreme Court arguments, and administrative rule-making and legislative advocacy before state and federal agencies and legislative bodies.<sup>15</sup>

In 1971, Maryland began to provide state funding for civil legal aid through a "Judicare" program administered by the Maryland Department of Human Resources' Maryland Legal Services Program.<sup>16</sup> The Judicare program reimbursed private attorneys at a reduced rate for representation of low-income persons in certain civil actions.<sup>17</sup> By 1981, Judicare served approximately ten thousand persons annually at a cost of \$2.5 million.<sup>18</sup> Local departments of social services throughout the state provided vouchers to income-eligible persons.<sup>19</sup> In addition, the Department of Human Resources' Maryland Legal Services Plan administered another program that reimbursed private attorneys for their representation of low-income persons in certain civil matters where a limited right to publicly-funded counsel was provided by statute or court rule, such as guardianship, adoption, or termination of parental rights cases.<sup>20</sup>

In the author's experience in Maryland, there has been a relatively informal, uncoordinated tradition of pro bono service in Maryland, where individual private attorneys provide legal assistance

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14. BRENNAN CTR. FOR JUSTICE, *supra* note 6, at 8.

In 1979, Legal Aid won a landmark case in the state courts, guaranteeing the mentally disabled the right to have attorneys represent them at commitment hearings. That same year, they won a federal decision, *Johnson v. Solomon*, that compelled mental institutions to regularly review the cases of child patients and determine whether they had improved enough to be released.

Legal Aid attorneys also prevailed in a U.S. Supreme Court case, *Griffin v. Richardson*, which overturned as unconstitutional a federal rule barring children born out of wedlock from receiving their deceased fathers' social security benefits. The victory not only improved the lives of impoverished children in Maryland, but also helped 30,000 children across the nation.

*Id.*

15. *Id.* at 8, 15.

16. John Mitchener, *The Pro Bono Program in Maryland: The Prototype for Interlocking Pluralism*, MD. B.J. 7 (Jan. 1984).

17. *Millemann Report*, *supra* note 4, at 8, 15.

18. *Id.* at 12.

19. *Id.* at 8; see also ADVISORY COUNCIL OF THE MD. LEGAL SERVS. CORP., ACTION PLAN FOR LEGAL SERVICES TO MARYLAND'S POOR (1988) [hereinafter 1988 LEGAL SERVICES ACTION PLAN]; see also Michener, *supra* note 16, at 7.

20. See 1988 LEGAL SERVICES ACTION PLAN, *supra* note 19, at 14.

without charge, at reduced fee, or in exchange for bartered goods and services. This has taken place upon direct request from clients, at the request of judges, or through participation with bar association programs. In 1969, the Baltimore law firm of Piper & Marbury became one of the first private law firms in the nation to open a branch office devoted exclusively to providing high quality legal services to low-income persons.<sup>21</sup> Piper's legal aid office was intended to be a model for other firms, but its lead was not followed.<sup>22</sup> After the firm closed its legal aid office, it helped to create, fund, and staff—with pro bono associates and partners—the Legal Services Clinic at the University of Maryland School of Law in 1976. This civil law clinic represented indigent clients in a variety of individual and reform cases until the mid 1980s.<sup>23</sup>

Immediately upon taking office in 1981, President Ronald Reagan sought to eliminate the LSC and federal funding for civil legal aid to the poor.<sup>24</sup> As a result of this threat, in late 1981, the LSC Board of Directors adopted a resolution that directed all of its grantees to allocate ten percent—increased in 1984 to 12.5 percent—of LSC grants to developing private attorney involvement components for civil legal aid to the poor.<sup>25</sup> In addition, in early 1981, LAB worked with the Maryland State Bar Association and others to establish the Maryland Volunteer Lawyers Service (MVLS) as a new nonprofit organization to promote and administer the development of private attorney pro bono services in Maryland.<sup>26</sup>

The Maryland Advocacy Unit for the Developmentally Disabled (MAUDD)—Maryland's second principal staff attorney civil legal aid delivery program and the first established to serve a particular client group and service area—was created in 1977 in response to federal legislation that called for each state to designate an entity to advocate for and protect the rights of its developmentally disabled population.<sup>27</sup> In 1984, MAUDD became the Maryland Disability Law

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21. Peter S. Smith and John Kratz, *Legal Services For the Poor—Meeting the Ethical Commitment*, 7 HARV. C. R. – C. L. L. REV. 509, 509–19 (1972).

22. ALLAN ASHMAN, *THE NEW PRIVATE PRACTICE: A STUDY OF PIPER & MARBURY'S NEIGHBORHOOD LAW OFFICE 102* (National Legal Aid and Defender Ass'n 1972).

23. Robert J. Rhudy, *Of Service: MLSC Celebrates Its First Quarter Century*, DAILY REC., Oct. 1, 2007.

24. HOUSEMAN, *supra* note 9, at 29–30.

25. *Id.* at 25.

26. Maryland Volunteer Lawyers Service, *Legal Assistance for People in Need: Twenty-five Years of Making Pro Bono Count, 1981–2006* (2006).

27. See Rhudy, *MLSC Continues*, *supra* note 6, at B15.

Center (MDLC), with the broadened mandate to represent persons with disabilities.<sup>28</sup>

In 1972, the Maryland General Assembly created the Maryland Office of the Public Defender (OPD)—a staff attorney base supplemented by reduced fee private attorney services in conflict cases and other circumstances—which provided representation of low-income persons in criminal matters in state courts.<sup>29</sup> In addition, the Public Defender provided legal counsel and representation to low-income persons in a certain distinct set of civil matters that were initiated by state action or who were under the jurisdiction of state institutions, including: persons facing involuntary commitment to mental institutions; children in child in need of assistance (CINA) proceedings as alleged to be neglected or abused; and persons incarcerated in prison seeking civil remedies for release or to contest prison conditions or treatment.<sup>30</sup> Although a relatively minor part of the Public Defender's mission, these services amounted to a fairly significant portion of Maryland's total civil legal services delivery.<sup>31</sup>

A formal clinical law program that provided education to law students and services to low-income clients began at the University of Maryland Law School in the fall of 1973.<sup>32</sup> The clinical program began with juvenile law cases and soon expanded to other legal areas.<sup>33</sup> In 1974, the University of Baltimore Law School began its "Legal Services to the Elderly," which expanded to other service areas as resources and experience permitted.<sup>34</sup> The principal focus of law school clinical programs has consistently been for law students to provide legal assistance under the direct supervision of clinical professors, to orient law students to the legal needs and personal circumstances of low-income and other underserved persons, and to promote students' understanding of the responsibilities of the legal profession to serve all sectors of society.<sup>35</sup> Clinical legal education

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28. *Id.*

29. See MD. ANN. CODE art. 27A § 3 (1972), *repealed by* MD. CODE ANN., CRIM. PROC. § 16-202 (West 2008).

30. 1988 LEGAL SERVICES ACTION PLAN, *supra* note 19, at 13.

31. *Id.* at 13–15.

32. See *supra* note 26.

33. Clinical program history, on file with Maryland Law Journal of Race, Religion, Gender and Class.

34. 1988 LEGAL SERVICES ACTION PLAN, *supra* note 19, at 15–16.

35. Brenda Bratton Blom, Address at the University of Maryland Law Journal of Race, Religion, Gender & Class's Maryland Legal Services Corporation 25th Anniversary Symposium: Recognizing Twenty-Five Years of Accomplishments and Setting an Agenda for the Future (October 11, 2007).

plays an important role in the promotion and development of Maryland's legal aid program.<sup>36</sup>

To summarize, by 1982 Maryland had developed a diverse civil legal aid system that included staff attorney programs (LAB, Maryland Advocacy Unit for the Developmentally Disabled/MDLC, and the Maryland Office of Public Defender), reduced fee compensated private attorney services (Maryland Legal Services Program's Judicare and mandated publicly funded legal counsel), pro bono services (MVLS), and small clinical programs at the state's two law schools. While it is difficult to determine the precise funding streams for these programs, LAB's revenues were primarily supported by federal funds, with limited support from state and local government and United Way; MAUDD funds were almost exclusively federal; Judicare's funds were allocated by the state (but were from federal block grants); state dollars funded the Public Defender's Office; and state funding, some foundation grants, and student tuitions supported the law school clinical programs. Maryland's civil legal aid system was almost completely funded by federal and state funding in nearly equal amounts in 1981, with a limited amount of support from local government and charitable contributions.

The growth of Maryland's civil legal aid program was reversed, however, by the end of 1981. In the wake of falling tax revenues from a brief recession and to recognize the transfer of Judicare funds to the LAB, the Maryland General Assembly cut the Judicare budget from \$2.5 million in 1981 to \$250 thousand in 1983, decimating the program and its services.<sup>37</sup> LAB's federal funding also declined approximately twenty-five percent in 1982 as a consequence of the reduction of LSC's congressional appropriation.<sup>38</sup>

## II. MARYLAND LEGAL SERVICES CORPORATION

Primarily in response to reduced and potentially eliminated federal funding for legal aid, in 1982, the Maryland General Assembly created the Maryland Legal Services Corporation (MLSC) with support from state and local bar associations, legal services and government leaders, and numerous advocacy organizations.<sup>39</sup> The

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36. *See id.*

37. Mitchener, *supra* note 16, at 7.

38. *See Rhudy, MLSC Continues, supra* note 6, at B15.

39. GreiBo Media, *Maryland Legal Services Corporation: 25 Years of Expanding Access to Justice*, available at <http://www.mlsc.org/awards.video25.htm>.



declaration of legislative intent and purpose of the Maryland Legal Services Corporation Act stated:

There is a need to provide equal access to the system of justice for individuals who seek redress of grievances. Reduction of federal funds has diminished the legal services provided by the existing statewide legal services programs: the Legal Aid Bureau, Inc.; the Maryland Advocacy Unit for the Developmentally Disabled, Inc.; and the Maryland Volunteer Lawyers Service, Inc. There is a need to continue and expand legal assistance to those who would otherwise be unable to afford adequate legal counsel. The availability of legal services reaffirms faith in our government of laws. The funding of legal assistance programs for those who are unable to afford legal counsel will serve the ends of justice and the general welfare of all Maryland citizens; and attorneys providing legal assistance must have full freedom to protect the best interests of their clients in keeping with the Code of Professional Responsibility and the high standards of the legal profession.<sup>40</sup>

The Act deemed MLSC a nonprofit corporation governed by a nine-member Board of Directors comprised of five attorneys and four non-attorneys who are each appointed by the Governor and confirmed by the Senate.<sup>41</sup> MLSC was established “for the purpose of receiving and distributing funds to grantees that provide legal assistance in noncriminal proceedings or matters to eligible clients.”<sup>42</sup> “Eligible client” was defined as “any person unable to afford legal assistance” as determined by MLSC, with maximum income levels for eligibility not greater than fifty percent of the Maryland median family income.<sup>43</sup> “Legal assistance” included “the legal representation of eligible clients by grantees and including training, research, coordination with private attorneys, and other activities necessary to insure the delivery of quality legal services.”<sup>44</sup> MLSC was directed to “insure that grants and

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40. Maryland Legal Services Corporation Act, MD. CODE ANN., HUMAN SERVS. §§ 11-101 to 11-801 (2007) (original version at MD. ANN. CODE. art. 10, § 45C (1982) (repealed 2007)).

41. Maryland Legal Services Corporation Act, § 11-301.

42. *Id.* § 11-201.

43. *Id.* § 11-101.

44. *Id.* § 11-101.

contracts are made so as to provide the most stable, economical and effective delivery of legal assistance and that eligible clients in all areas of the state shall have access to those services.”<sup>45</sup> In addition, MLSC was empowered to require the keeping of records by grantees, to have access to such records, and to require such reports as it deemed necessary regarding activities conducted under its funding.<sup>46</sup> MLSC was also directed to report annually to the Governor, Comptroller, and General Assembly on its activities.<sup>47</sup>

The Maryland General Assembly also created a voluntary Interest on Lawyer Trust Account (IOLTA) program in 1982 as a funding source for MLSC.<sup>48</sup> Maryland was the fourth state in the United States to establish IOLTA funding for legal aid.<sup>49</sup> Today IOLTA programs exist in all fifty states and the District of Columbia, as well as Australia, Canada, and New Zealand.<sup>50</sup> MLSC made its first grants on June 14, 1984, for fiscal year 1985 for \$307,500 to LAB, MAUDD, and MVLS.<sup>51</sup> In 1984, the Maryland General Assembly amended the MLSC Act, effective July 1, 1985, directing the Governor to appropriate at least \$500 thousand in the state budget annually for the activities of the Corporation and to transfer \$500 thousand of this amount from the State Unclaimed Property Fund.<sup>52</sup> In fiscal year 1987, MLSC’s legal services grant expanded to \$1,065,600, divided between five organizations: LAB, MDLC (formerly MAUDD), MVLS, House of Ruth Domestic Violence Law Center, and Maryland New Directions Legal Services Project (subsequently named Alternative Directions).<sup>53</sup>

### III. ACTION PLAN FOR LEGAL SERVICES TO MARYLAND’S POOR

In May 1987, MLSC created a thirty-member advisory council that included bar and legal services leaders, judges, legislators, public officials, and law school professors to examine the need for and provision of civil legal assistance by Maryland’s low-income

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45. *Id.* § 11-201.

46. *Id.* § 11-504.

47. *Id.* § 11-207.

48. *Id.* § 10-303 (2007).

49. See IOLTA History, [http://www.iolta.org/grants/item.IOLTA\\_History](http://www.iolta.org/grants/item.IOLTA_History).

50. *Id.*

51. Maryland Legal Services Corporation Act, § 11-201 (2007).

52. MD. ANN. CODE. art. 10, § 45(O) (1982), *repealed by* Maryland Legal Services Corporation Act, §§ 11-401–11-408 (2007).

53. Maryland Legal Services Corporation Act, § 10-303.

population and to recommend how to better serve such need.<sup>54</sup> Then-U.S. Congressman and now Senator, Benjamin L. Cardin, served as chair of the MLSC Advisory Council; the author served as staff director for the project.<sup>55</sup>

The Advisory Council adopted four principal goals for the Action Plan:

1. Assess the needs for civil legal assistance by Maryland's low-income population;
2. Analyze all programs providing civil legal assistance to the poor in Maryland;
3. Determine what additional resources or reallocations of existing resources are necessary to meet that need;
4. Recommend specific policy changes to expand access to justice in civil matters for Maryland's poor.<sup>56</sup>

Under the direction of the Advisory Council, the project staff and consultants—including judges, legal aid workers, and human services providers throughout Maryland—surveyed hundreds of low-income persons, reviewed relevant literature, and talked with knowledgeable persons across the United States to determine legal need and recommend policies to expand access to justice.<sup>57</sup> The Advisory Council also held numerous public hearings and meetings to gather responses to an initial draft report.<sup>58</sup> The MLSC Advisory Council, subsequently known as the “Cardin Commission,” adopted its *Action Plan for Legal Services to Maryland's Poor* on December 17, 1987.<sup>59</sup> In the author's experience, the “Action Plan” subsequently became the major blueprint implemented by MLSC for much of the subsequent legal aid development in Maryland over the succeeding twenty years.

The Advisory Council found that less than twenty percent of Maryland's low income population with critical family, consumer, landlord-tenant, employment, social security, or other civil legal

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54. 1988 LEGAL SERVICES ACTION PLAN, *supra* note 19, at ii, viii; *see also* Benjamin L. Cardin & Robert J. Rhudy, *Expanding Civil Legal Assistance to Maryland's Poor*, 11 MD. L. F. 5, 5 (1988).

55. 1988 LEGAL SERVICES ACTION PLAN, *supra* note 19, at viii.

56. *Id.*

57. *Id.*

58. *Id.* at ix.

59. *Id.*

problems were served by existing legal aid or voluntary private attorney efforts.<sup>60</sup> In response, the Advisory Council proposed doubling the total resources for legal services to Maryland's poor and offered forty-one recommendations directed at federal and state governments, lawyers, courts, law schools, legal services programs, and the private sector to meet this goal.<sup>61</sup>

The Advisory Council reported that in fiscal year 1987 "approximately 144 attorneys work[ed] full-time in non-profit legal services organizations or in public law offices providing civil legal assistance to low-income persons," 110 of which worked for the Legal Aid Bureau.<sup>62</sup> Maryland's fiscal year 1987 civil legal aid system of such staffed non-profit legal aid organizations, reduced fee private attorney programs, and pro bono services opened approximately forty-four thousand new cases.<sup>63</sup> Of this total, 24,380 were opened by LAB, 4,486 by MDLC, and approximately 3,500 were served by MVLS and other bar association pro bono or reduced fee programs.<sup>64</sup> The Maryland Legal Service Programs' "Judicare program served 1,124 cases at a cost of \$290,659" in fiscal year 1987.<sup>65</sup> "In comparison, Judicare served an estimated [thirteen thousand] cases in FY 1980 at a cost of [\$2.5 million]."<sup>66</sup> The University of Maryland Law School Clinic served 250 cases; the University of Baltimore Law School Clinic served 895.<sup>67</sup>

Total funding for Maryland's civil legal programs in fiscal year 1987, exclusive of child support collection representation provided by State's Attorney offices, was approximately \$10.4 million.<sup>68</sup> State allocations were forty-nine percent of the total, federal funding was thirty-seven percent, and others (including "IOLTA, local government, area agencies on aging Title III B grants, United Way, [and] private contributions") constituted fourteen percent.<sup>69</sup> IOLTA income generated in fiscal year 1986 used for fiscal year 1987 legal services funding amounted to \$840,000.<sup>70</sup>

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60. *Id.*

61. *Id.* at 27-36.

62. *Id.* at 13.

63. *Id.* at 15.

64. *Id.*

65. *Id.* at 14.

66. *Id.*

67. *Id.* at 15-16.

68. *Id.* at 19.

69. *Id.*

70. *Id.*

As enacted in 1982, Maryland's original IOLTA program was voluntary, meaning that attorneys were not required to place their IOLTA-eligible funds—those that were either too small in amount or held for too short a period of time to generate net interest for the client or other beneficial recipient—into an IOLTA account.<sup>71</sup> To reach its overall goal of doubling legal services in a reasonable amount of time, the Advisory Council identified conversion of IOLTA into a mandatory program by the Maryland General Assembly and adoption of a mandatory attorney pro bono rule by the Maryland Court of Appeals as its highest priority recommendations.<sup>72</sup> Some of the other major recommendations were as follows: increase federal and state funding, including restoring state funding to the Judicare program; assess civil filing fee surcharges to be used to fund legal aid; require law students to provide legal services to low-income persons in clinical programs as a condition of graduation; provide law school tuition loan forgiveness for new lawyers to enter legal aid careers; expand bar association leadership in developing pro bono, reduced fee, and other approaches to serving the poor; increase contributions by local governments, foundations, agencies on aging, foundations, charities, corporations, and individuals; and create a statewide "Access" program to coordinate intake, information, and referral for low-income persons needing legal assistance.<sup>73</sup>

#### IV. MARYLAND LEGAL SERVICES EXPANSION: 1988–PRESENT

With the exception of the mandatory pro bono proposal, the Advisory Council's report and recommendations were generally very well received by bar leadership, legal services leaders, and many in state government.<sup>74</sup> MLSC, with the continued support of the Advisory Council, immediately began work to implement a number of the recommendations.<sup>75</sup> Maryland's governor William Donald Schaefer provided one million dollars in fiscal year 1989 budget requests to be divided equally between the state's two law schools to expand clinical law opportunities for law students, which was approved by the

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71. See *supra* note 52.

72. 1988 LEGAL SERVICES ACTION PLAN, *supra* note 19, at 36.

73. *Id.* at 31–36.

74. Janet Stidman Eveleth, *Vote in on Cardin Report*, MD. ST. B. ASS'N NEWSLETTER, Jan. 1988, at 1.

75. See generally, Scott Sherman, *Bar Reacts to Cardin Report*, THE DAILY REC., Oct. 8, 1987, at 7; Michael Wentzel, *Bar Group Questions Legal Aid Proposals*, THE EVENING SUN, Oct. 26, 1987, at A1; James L. Thompson, *President's Message*, NEWSLETTER OF THE B. ASS'N OF MONTGOMERY COUNTY, MD., Jan. 1988, at 1.

Maryland General Assembly and retained for several succeeding years.<sup>76</sup> In 1988, MLSC fought for legislation to amend the IOLTA statute to convert the program from voluntary to mandatory, which was enacted in 1989.<sup>77</sup> While it rejected this recommendation for a mandatory pro bono rule, the Maryland State Bar Association and other local bar associations undertook a campaign—with support from Maryland Chief Judge Joseph Murphy—to encourage increased pro bono participation and service by Maryland attorneys, and creation of the People's Pro Bono Access Center (subsequently renamed Pro Bono Resource Center) to help coordinate pro bono services statewide.<sup>78</sup>

As a result of the conversion legislation, IOLTA income grew from \$917,661 in fiscal year 1988 to \$4,930,087 in fiscal year 1990.<sup>79</sup> MLSC used the increased IOLTA revenues beginning in fiscal year 1990 to increase funding for operating grants to existing legal aid programs, and to support new specialized staff programs and local pro bono programs created in response to special needs and circumstances.<sup>80</sup> MLSC also made a range of capital grants to support the state's legal aid capacity, including funding for Legal Aid Bureau's new headquarters office in Baltimore, for LAB's strategic planning, and enhanced computerization and other office equipment in legal services offices throughout the state.<sup>81</sup>

MLSC has initiated, funded, and participated in numerous commissions in cooperation with leading members of Maryland's judiciary, bar, law schools, and legal services community since the 1987 Action Plan to determine legal need, increase resources, and develop a more effective and efficient legal aid system.<sup>82</sup> These have included, among others, the Advisory Council on Family Legal Needs of Low Income Persons.<sup>83</sup> MLSC has used the findings and recommendations from all the reports to do the following: revise

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76. See Benjamin L. Cardin & Robert J. Rhudy, *Expanding Pro Bono Legal Assistance in Civil Cases to Maryland's Poor*, 49 U. MD. L. REV. 1 (1990).

77. MD. CODE ANN., BUS. OCC. & PROF. § 10-303 (LexisNexis 2000).

78. See Sharon E. Goldsmith, *Pro Bono: Ushering in a New Era*, XXXII MD. B.J. 9, 9-13 (1999) (describing the People's Pro Bono Action Center as a comprehensive coordination and support initiative for legal service agencies and advocates).

79. MARYLAND LEGAL SERVICES CORPORATION, 1988 ANN. REP. (1988); MARYLAND LEGAL SERVICES CORPORATION, 1990 ANN. REP. (1990).

80. MARYLAND LEGAL SERVICES CORPORATION, 1990 ANN. REP. (1990); MARYLAND LEGAL SERVICES CORPORATION, 1991 ANN. REP. (1991).

81. *Id.*

82. See generally *Millemann Report*, *supra* note 4.

83. *Id.*

policies and grant priorities; create and assess model legal services projects; fund new programs; and undertake working relationships with the Judiciary, Maryland State Bar Association and local bars, legal services community, law schools, foundations, and others to expand legal services.

The report of the Advisory Council on Family Legal Needs of Low Income Persons had a substantial impact on the administration and access to justice in family law matters in Maryland. The Maryland Judiciary has since implemented family court structures throughout Maryland, established courthouse based self-help services, and greatly expanded the use of mediation in child custody and visitation and other family law matters.<sup>84</sup> Over forty thousand persons received assistance from court-provided “assisted pro se” services in family law matters before the court in fiscal year 2007.<sup>85</sup>

Through the participation and support of such groups—and especially the outstanding leadership of Maryland Chief Judge Robert M. Bell—Maryland has developed numerous programs and policies in the past fifteen years that substantially expanded and improved pro bono services, court-based and other assisted pro se services, domestic violence legal protections, mediation, funding for legal services, and access to justice.<sup>86</sup> For example, in 1997, the Maryland General Assembly enacted a provision permitting the Maryland Judiciary to assess surcharges on civil filing fees in the district and circuit courts that would be collected and allocated into a state fund for appropriation to the MLSC.<sup>87</sup> This provision was amended in 2004 to increase the permitted amount of the surcharge and increase the amount of funding available for allocation to MLSC.<sup>88</sup> In fiscal year 2007, the filing fee surcharges generated \$6.9 million to help fund

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84. See *Millemann Report*, *supra* note 4.

85. MLSC 25th Anniversary Symposium, *supra* note 2. See generally MARYLAND JUDICIARY, CLEARING A PATH TO JUSTICE: A REPORT OF THE MARYLAND JUDICIARY WORK GROUP ON SELF-REPRESENTATION IN THE MARYLAND COURTS 1–39 (2007), available at <http://www.courts.state.md.us/publications/pdfs/selfrepresentation0807.pdf> [hereinafter CLEARING A PATH TO JUSTICE].

86. See Susan M. Erlichman, *Maryland's Diverse Legal Services System*, XXXII MD. B.J. 26, 30–31 (1999) (arguing that the MLSC, the Maryland State Bar Association, and legal service providers are working together to provide legal services to all Maryland citizens); see also Robert J. Rhudy, *Equal Access: To Maryland's System of Justice*, XXXVI MD. B.J. 48, 48 (2003) [hereinafter Rhudy, *Equal Access*] (“MLSC’s activities have significantly expanded legal services for lower-income persons in [Maryland].”); Robert J. Rhudy, *Funding Maryland's Delivery System*, XXXII MD. B.J. 33, 33 (1999) (stating that groups, such as the MLSC, have worked to provide legal services for lower-income persons).

87. MD. CODE ANN., CTS. & JUD. PROC. § 7-202 (LexisNexis 2002).

88. MD. CODE ANN., MD. R. §§ 16-901–16-903.

MLSC activities.<sup>89</sup> In 1999, MLSC initiated the development of a Maryland Legal Assistance Network (MLAN) to expand and coordinate the provision of legal information, advice, referral, and assisted pro se services under the direction of a twenty-member oversight committee appointed and chaired by Chief Judge Bell.<sup>90</sup> While MLAN has not yet achieved its full objectives, one successful result is the development of the web-based legal information system: Maryland People's Law Library, now maintained by the Maryland Law Library.<sup>91</sup> Also, in late 1999, MLSC and the Maryland Administrative Office of the Courts initiated a Model Child Custody Representation Project to serve certain high-need contested child custody cases that involved allegations of domestic violence, drug or alcohol abuse, and where the opposing party had legal counsel representation.<sup>92</sup> Legal services were initially provided in Anne Arundel, Montgomery, and Prince George's Counties through a combination of staff attorneys at the Legal Aid Bureau and private attorneys who agreed to represent parties in such cases as a reduced fee.<sup>93</sup> In 2006, the Child Custody Representation Project expanded statewide.<sup>94</sup> In 2002, the Maryland Court of Appeals adopted rules that (1) established a goal of fifty hours of pro bono service per year for full-time practicing lawyers and required all attorneys to annually report on their pro bono service and financial contributions to assist in the provision of legal assistance to low-income people and other matters; (2) created a Maryland Standing Committee on Pro Bono Legal Service; and (3) established local pro bono committees under judicial authority in every jurisdiction in the state.<sup>95</sup>

"In fiscal year 2007, MLSC awarded \$10.9 million in grants to thirty-four legal services providers" for civil legal services to low-income persons in Maryland.<sup>96</sup> These programs reported providing

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89. MARYLAND LEGAL SERVICES CORPORATION, MD. LEGAL SERV. CORP. CELEBRATES 25 YEARS!: FISCAL YEAR 2007 ANN. REP. 1 (2007) [hereinafter MLSC 2007 ANN. REP.].

90. See Janet Stidman Eveleth, *New Legal Service Network for New Century*, XXXII MD. B.J. 15, 15-18 (1999) (stating that Maryland's legal community is creating a legal assistance network to expand legal services to low and middle-income persons in Maryland); see also Robert Rhudy, *Creating a New Maryland Legal Assistance Network*, 21 NAT'L LEGAL & DEFENDER ASS'N CORNERSTONE 5 (Spring 1999).

91. Maryland's Peoples Law Library, <http://www.peoples-law.info> (last visited Jan. 27, 2009).

92. See Gloria Danziger, *Model Child Representation Project Evaluation Report* (Apr. 7, 2003) (unpublished report, on file with University of Baltimore School of Law).

93. *Id.*

94. MARYLAND LEGAL SERVICES CORPORATION, 2006 ANN. REP. 2 (2006).

95. MD. CODE ANN., MD. R. §§ 16-901-16-903.

96. MLSC 2007 ANN. REP., *supra* note 89, at 1.



legal assistance in 104,333 closed cases during this period.<sup>97</sup> Of this total, forty-five percent were in family cases, twenty-three percent housing, eight percent juvenile, five percent consumer and finance, three percent immigration, two percent income maintenance, and fourteen percent in other matters.<sup>98</sup> IOLTA income increased substantially in fiscal year 2007 to \$6.4 million, while filing fee surcharge revenue generated \$6.9 million.<sup>99</sup> Overall, MLSC income was approximately \$14.4 million in fiscal year 2007, up twenty-four percent from the previous fiscal year.<sup>100</sup>

Of the total 104,333 reported closed cases in fiscal year 2007, nearly eight thousand were closed by pro bono private attorneys upon referral from MLSC-funded organizations.<sup>101</sup> The MLSC Advisory Council reported on 2,889 cases closed by pro bono attorneys in fiscal year 1987.<sup>102</sup>

In comparison, MLSC's total income in fiscal year 1987 was \$1,687,865, of which \$1,068,830 came from IOLTA.<sup>103</sup> In June 1986, MLSC awarded grants to five legal services providers for fiscal year 1987, which totaled \$1,065,600 and provided legal assistance in 31,244 cases, including: twenty-six percent family, twenty-one percent health/disability, fifteen percent juvenile, nine percent housing, eight percent income maintenance, six percent consumer, and fifteen percent other.<sup>104</sup> While total case statistics from all publicly supported civil legal services providers (including the Maryland Legal Services Program, Maryland OPD, Maryland law school clinics, and assisted pro se services in family matters provided by court-based programs, as well as the thirty-four MLSC-funded grantees) and total funding from all sources (MLSC, state, judicial, federal, foundations, bar associations, and other private contributions) are not currently available, the author estimates that total funding and total case services have quadrupled from 1987 to 2007.<sup>105</sup>

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97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. MLSC 25th Anniversary Symposium, *supra* note 2.

102. *Id.*; see also 1988 LEGAL SERVICES ACTION PLAN, *supra* note 19, at 15–16.

103. MARYLAND LEGAL SERVICES CORPORATION, 1987 ANN. REP. (1987).

104. *Id.*

105. *Id.*; see also Rhudy, *Equal Access*, *supra* note 86 (providing the most recent comprehensive overview of Maryland civil legal services statistics and funding).

## V. CONTINUING TO BUILD EQUAL ACCESS TO JUSTICE

Building on a rich foundation, MLSC has worked with the judiciary, legal services provider organizations, bar, law schools, and others to substantially expand and improve the provision of access to justice for low-income persons in Maryland. By various accounts and perspectives, Maryland appears to have produced one of the most effective civil legal programs in the United States.<sup>106</sup>

Under the existing Maryland legal aid system, however, many people with legal needs remain unserved. There has not been a systematic effort to quantify unmet need for legal assistance by Maryland's low-income population since 1996.<sup>107</sup> In 2005, the United States LSC estimated that at least eighty percent of the civil legal needs of low-income Americans were not met.<sup>108</sup> Such continuing unmet need in Maryland is suggested, in part, by a recent Maryland Judiciary report that states that

Circuit Court family divisions and family services programs report that statewide, seventy percent of all domestic cases include at least one self-represented litigant at the time the answer is filed in the case.<sup>109</sup> In Baltimore City, that figure increases to eighty-five percent.<sup>110</sup> The District Court of Maryland hears case types in huge numbers where litigants are rarely represented: traffic cases, small claims, landlord-tenant cases.<sup>111</sup>

Maryland is one of many states that operate two parallel, but almost entirely separate, systems to provide legal assistance to lower-income persons in criminal or civil matters. It is useful to consider the nature and mission of the Maryland OPD, which provides legal

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106. See, e.g., Ken Smith, Martha Bergmark & Wayne Moore, *The Full Access Financial Scorecard for State Access-to-Justice Communities*, 16 MANAGEMENT INFORMATION EXCHANGE 9 (Winter 2002).

107. Maryland Coalition for Civil Justice, MARYLAND STATEWIDE LEGAL PLAN FOR LOW-INCOME PERSONS (Maryland State Bar Ass'n, July 1996); see also, Mason-Dixon Opinion Research, Inc., MARYLAND LEGAL NEEDS ASSESSMENT SURVEY (University of Maryland Law School and University of Baltimore Law School, February 1995).

108. LEGAL SERVICES CORPORATION, DOCUMENTING THE JUSTICE GAP IN AMERICA preface (2007), available at <http://www.lsc.gov/justicegap.pdf>.

109. *Id.*

110. *Id.*

111. CLEARING A PATH TO JUSTICE, *supra* note 85.

assistance to persons charged with crimes in state courts, with the states civil legal aid system.<sup>112</sup>

The tasks and challenges before Maryland's civil legal aid system differ greatly from those of the Maryland Office of Public Defender. While the Public Defender is a unified service delivery system under the management of one central office financed by state funds, the civil legal aid system encompasses numerous independent agencies, organizations, and funding sources. Furthermore, virtually all of the Public Defender's legal services are provided to persons after litigation has been filed, while much of the work of the civil legal aid system seeks to prevent or resolve conflicts prior to litigation.<sup>113</sup>

There are currently more than forty separate public and nonprofit federal and state entities involved in funding, coordinating, providing, or evaluating the provision of civil legal assistance to lower-income persons in Maryland.<sup>114</sup> In comparison to the Maryland Public Defender role in criminal matters, it should be understood that no entity has the charged responsibility to manage the Maryland civil legal aid system: it is not a managed system.<sup>115</sup> It is also not a system that is easy for the intended beneficiary—persons seeking and potentially eligible for publicly supported legal assistance—to understand, access, and use because there are so many different providers of legal aid, most with different office locations and phone numbers.<sup>116</sup>

MLSC—the largest funding source for civil legal aid to lower-income persons in the state—has responsibility and some ability to monitor and evaluate how its funds are used by its grantees, the primary legal aid providers, and to reallocate funding under negotiated

112. See MD. CODE ANN., CRIM PROC. §16-201.

It is the policy of the State [through the Office of the Public Defender] to: (1) provide for the realization of the constitutional guarantees of counsel in the representation of indigent individuals, including related necessary services and facilities, in criminal and juvenile proceedings in the State; (2) assure the effective assistance and continuity of counsel to indigent accused individuals taken into custody and indigent individuals in criminal and juvenile proceedings before the courts of the State; and (3) authorize the Office of the Public Defender to administer and assure enforcement of this title.

*Id.*

113. See Rhudy, *Equal Access*, *supra* note 86; see also Brief for MLSC as Amici Curiae Supporting Petitioner, *Frase v. Barnhart*, 379 Md. 100 (Md. 2003) (No. 691).

114. Rhudy, *Equal Access*, *supra* note 86, at 51–52.

115. See Rhudy, *Equal Access*, *supra* note 86; see also Brief for MLSC as Amici Curiae Supporting Petitioner, *Frase v. Barnhart*, 379 Md. 100 (Md. 2003) (No. 691).

116. See Rhudy, *Equal Access*, *supra* note 86; see also Brief for MLSC as Amici Curiae Supporting Petitioner, *Frase v. Barnhart*, 379 Md. 100 (Md. 2003) (No. 691).

terms as it deems appropriate.<sup>117</sup> However, MLSC dollars constitute far less than half of the budgets for major civil legal aid organizations. Because its oversight authority is limited to use of its funding, MSLC possesses little influence over the activities funded by other organizations. The principally involved independent entities include the following: MLSC; United States' LSC; Maryland Judiciary; LAB; Maryland Department of Human Resources; MVLS; Pro Bono Resource Center; MDLC; Maryland OPD; thirty-four other nonprofit organizations receiving MLSC funding; and the state's law school clinical programs. Additional organizations—which have not been previously discussed—promote, fund, or provide civil legal aid; these organizations include the Maryland Department of Aging, fifteen local departments of aging, and numerous local bar association lawyer referral and pro bono projects.<sup>118</sup> MLSC maintains substantial interaction with its grantees, the Maryland Judiciary, and the Maryland bar; some interaction with the Maryland Department of Aging; but almost no interaction with the Maryland OPD or Maryland Department of Human Resources' Legal Services Program.

The various components of Maryland's civil legal aid system seek to provide the following types of services in a reasonably efficient and effective manner to advance access to justice:

1. Helping [income-eligible] people understand their legal rights, responsibilities, and remedies [through legal education and information].
2. Helping people anticipate and prevent legal problems.
3. Helping resolve legal problems without litigation [either by resolving conflicts themselves with legal information and advice, or through mediation, negotiation, or other approaches].
4. Helping people to effectively use courts and other tribunals without attorneys [i.e., utilize “assisted

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117. See IOLTA History, *supra* note 49.

118. See MICHAEL MILLEMANN, REPORT TO THE MD. ST. B. ASS'N SECTION ON DELIVERY OF LEGAL SERVICES, FINAL REPORT AND RECOMMENDATIONS ON THE POTENTIAL USE OF PRIVATE LAWYERS 1, 20 (May, 2007) (providing a detailed list of independent and MLSC-funded legal service providers in Maryland). The Maryland Department of Aging, in common with all “State Unites of Aging” in the United States, is required by the Older American's Act, Section 307(a)(13), to designate a “legal assistance developer” on staff to assist with the development of legal aid to persons aged sixty and older. 42 U.S.C.A. §§ 3026(a)(2)(C), 3027(a)(11), 3027(a)(13) (West 2003) (amended 2006).

pro se” approaches in appropriate circumstances].

5. Screening [potential cases] to determine when legal representation is required to help people effectively present and resolve meritorious claims and defenses in substantial civil matters involving family, safety, housing, employment, property, health, and other fundamental needs.
6. Providing legal counsel in such instances on an affordable (free or sliding-fee) basis to income eligible persons; [and
7. Promoting law reform through advocating changes in public policies on behalf of concerned clients through litigation, legislative and administrative advocacy, research, publicity, media advocacy, and other approaches].<sup>119</sup>

In the author’s view, one major success over the past twenty-five years is the components to provide all these services have been established and are functioning with committed staffs, boards, directors, and volunteers. As described in Part IV, the total volume of services provided has expanded substantially. The author believes another major success during this period is that Maryland’s judicial and legal communities have moved toward a consensus that the state has an obligation to assure access to justice for all persons in at least some essential matters.

If all relevant stakeholders determine that Maryland’s public policy requires the provision of legal aid and related access to justice services for lower-income person in significant civil legal matters and move to establish a system to do so, the following questions must be addressed:

1. In what instances are some level of direct legal counsel and representation required to assure access to justice?
2. In what kinds of instances can eligible persons be adequately served with various forms of self-help information and assistance?

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119. See Rhudy, *Equal Access*, *supra* note 86, at 51–53; see also Brief for MLSC as Amici Curiae Supporting Petitioner, *Frase v. Barnhart*, 379 Md. 100 (Md. 2003) (No. 691).

3. What types of conflicts or other needs are deemed so essential as to receive publicly funded legal aid or other support?
4. What classes of persons (e.g., juveniles, persons with mental or physical disabilities, institutionalized persons, non-English speakers, etc.) are determined to be most “at need” and entitled to assured legal assistance?
5. Should civil legal services continue to be provided, funded, promoted, or otherwise supported through several different public agencies (MLSC, Department of Human Resources, Maryland Office of Public Defender, Maryland Department of Aging), or should there be some amount of consolidation?
6. Should Maryland create a gateway system to provide intake, screening, financial and case eligibility determinations, brief services and referral to the appropriate legal assistance to simplify access and use of the system by intended consumers and more effectively and efficiently use public resources?
7. Should there be changes to the income-eligibility standards for receiving legal aid? Should all services be provided without charge for eligible persons as at present, or should persons at some income level be charged a sliding fee co-pay as in some other publicly supported services such as Medicare?
8. How will the system be managed and administered?
9. How much additional public funding and other resources will be needed to operate and manage the system?

Pursuant to the recommendations of the Maryland Judiciary Work Group on Self-Representation in the Maryland Courts [hereinafter “Work Group”], the Maryland Judiciary established a

Maryland Access to Justice Commission in early 2008.<sup>120</sup> Numerous states have created similar commissions over the past ten years—most frequently at the instigation of the judiciary in cooperation with the bar, legal services providers, client community, and representatives from the executive and legislature.<sup>121</sup> The Work Group report states that

In its initial meeting, the work adopted for itself a mission which focused on a four-pronged approach:

The mission of the Work Group on Self-Representation in the Maryland Courts is to plan a strategic and integrated response to the needs of self-represented litigants in Maryland courts. The Work Group will review the impact of self-representation on Maryland courts and will make recommendations for steps the Maryland Judiciary can take to: (1) improve the ability of self-represented litigants to navigate the Maryland judicial system; (2) improve the response of court staff to the self-represented; (3) enhance the ability of judges to respond effectively to the self-represented in the courtroom; and (4) support improvements in the legal services delivery system to promote access to representation and other legal services where appropriate.<sup>122</sup>

To better assist self-represented persons before Maryland's courts and to support improvements in the legal services delivery system, the Maryland Judiciary Work Group urged the Maryland Access to Justice Commission to implement the recommendations in its report.<sup>123</sup>

While the bulk of the report focuses on activities to support self-represented persons to access and use the court, it also found that "many litigants remain, against their wishes, without counsel when

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120. See Pamela Cardullo Ortiz, Address at the University of Maryland Law Journal of Race, Religion, Gender & Class's Maryland Legal Services Corporation 25th Anniversary Symposium: Recognizing Twenty-Five Years of Accomplishments and Setting an Agenda for the Future (October 11, 2007); CLEARING A PATH TO JUSTICE, *supra* note 85, at 16; Janet Stidman Eveleth, *Court Creates Maryland Access to Justice Commission*, MD. B. BULL. (Md. State Bar Ass'n), Nov. 2008.

121. See ABA Resource Center for Access to Justice Initiatives, *Guidance of State Access to Justice Commissions and Structures*, <http://www.abanet.org/legalservices/sclaid/atjresourcecenter/atjmainpage.html>.

122. CLEARING A PATH TO JUSTICE, *supra* note 85, at 2.

123. *Id.* at 16–17.

their case is really inappropriate for self-representation.”<sup>124</sup> To promote increased access to representation for such persons, the Work Group made two specific recommendations: (1) “[s]upport efforts to revive a *Judicare*-style legal services model in the state,” and (2) “[a]ppoint a Bench-Bar committee to explore ways to support discrete task representation.”<sup>125</sup> The phrase “discrete task representation”—sometimes referred to as “unbundled legal services”—was described as permitting “attorneys to provide limited assistance perhaps where litigants of limited means most need it.”<sup>126</sup> By finding avenues that permit litigants to secure the help of an attorney in limited ways, the self-represented may be better able to respond effectively in their case, they will be better prepared, and courts will be more likely to have the information necessary to make an appropriate decision.”<sup>127</sup>

The Work Group recommended specific categories of commission members, totaling forty-one, by office or service area, including: the chief judges of the state’s three court levels, numerous other judicial representatives, representatives from public law offices and the Maryland State Bar Association, the executive directors of major legal services organizations, a representative from the Maryland Governor, a Maryland senator and a delegate, a U.S. Senator and a member of the U.S. House of Representatives, law school representatives, and other persons.<sup>128</sup> The Work Group also recommended that staffing for the commission that would—at a minimum—consist of an executive director, deputy director, and support staff.<sup>129</sup>

The Work Group report concluded that

Maryland has earned a national reputation as a leader for its commitment to access to justice . . . . The Maryland Judiciary’s willingness to partner and collaborate with the Bar and the legal services community is notable. Imagine how effective that

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124. *Id.* at 13–14.

125. *Id.* at 14.

126. *Id.* at 14–15; see also FORREST S. MOSTEN, UNBUNDLING LEGAL SERVICES: A GUIDE TO DELIVERING LEGAL SERVICES A LA CARTE 1–4 (ABA 2000); Michael A. Millemann, et al., *Handbook on Limited Scope Legal Assistance: A Report of the Modest Means Task Force*, 2003 A.B.A. SEC. LITIG. REP. 1, 4–6 [hereinafter *Handbook on Limited Scope Legal Assistance*].

127. CLEARING A PATH TO JUSTICE, *supra* note 85, at 14–15; see also MOSTEN, *supra* note 126; *Handbook on Limited Scope Legal Assistance*, *supra* note 126.

128. CLEARING A PATH TO JUSTICE, *supra* note 85, at 17–19.

129. *Id.* at 19.



commitment and those partnerships might be when organized under the umbrella of a Maryland Access to Justice Commission. That entity will provide the vehicle through which the Judiciary and its justice system partners can collaborate to create a more thorough, and effective implementation strategy for undertaking key justice initiatives. Maryland is poised to continue and strengthen its role as a national leader in enhancing access to justice.<sup>130</sup>

As one recent successful Maryland model, The Maryland Access to Justice Commission may wish to review the work of the Maryland Alternative Dispute Resolution Commission (ADR Commission) established and chaired by Maryland Chief Judge Robert M. Bell in 1999 to determine how to advance the use of mediation and other dispute resolution approaches in this state's courts, agencies, schools, communities and other settings.<sup>131</sup> In addition to conducting a thorough review of state alternative dispute resolution circumstances, activities, and attitudes, the ADR Commission and its staff conducted an examination and review of "Best Practices" around the United States, and Canada to a limited extent, regarding alternative dispute resolution for possible emulation in Maryland.<sup>132</sup> Upon the recommendation of the ADR Commission, the Maryland Judiciary established a new office within the judiciary, Maryland Mediation and Conflict Resolution Office (MACRO) to continue implementing the expansion and improvement of mediation in the state pursuant to the ADR Commission report and subsequent findings.<sup>133</sup> Substantially as the results of the Task Force and MACRO's work, Maryland has received national recognition for its recent leadership in advancing the use of mediation and other related conflict resolution approaches.<sup>134</sup>

Another action underway that could advance this kind of legal aid evaluation and policy review is the Maryland's Public Justice Center's continuing efforts to advocate for a civil Gideon right to counsel in certain civil matters before the Maryland Court of

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130. *Id.* at 20.

131. See MD. ALTERNATIVE DISPUTES RESOLUTION COMM'N., JOIN THE RESOLUTION: THE MD. ADR COMM'N'S PRACTICAL ACTION PLAN 1-3 (Dec. 1999).

132. See *id.* at 7-8.

133. See MACRO, BRINGING PEOPLE TOGETHER: CONFLICT RESOLUTION IN MARYLAND (2004), available at <http://www.mdcourts.gov/macro/annualreportfy04.pdf>.

134. See National Recognition, <http://www.mdcourts.gov/macro/awards.html> (last visited Mar. 30, 2009).

Appeals.<sup>135</sup> The issue was raised in 2003 in a case argued by former Maryland Attorney General Stephen Sachs on behalf of the Public Justice Center, where the court refused by a 4–3 decision to reach the issue.<sup>136</sup> The Maryland Court of Appeals will likely face the issue again in the near future.<sup>137</sup> If the court should rule that such a right to publicly-provided legal counsel exists in certain legal matters and circumstances, it will necessitate the determination of how to provide, manage, administer, and fund the right.

In 1987, the MLSC Advisory Council conducted a review of “best practices” around the United States to support the delivery of civil legal aid as one basis for its recommendations.<sup>138</sup> The new Maryland Access to Justice Commission may wish to conduct a similar review of successful activities in other states to promote legal services and increase access to justice. For example, in 1997 the State Bar of California created a twenty-four member access to justice commission, with members appointed by the California governor, attorney general, senate president, speaker of the house, judicial council, state bar, chamber of commerce, council of churches, and other groups.<sup>139</sup> In 2004, the commission created a task force to develop a model statute that provides a right to counsel in civil matters for those who cannot afford private legal counsel.<sup>140</sup> The task force sought to identify and address the full range of questions that would need to be answered if a broad right to counsel in civil matters was established by a court decision or legislature.<sup>141</sup> Issues addressed included income eligibility, case eligibility, what types of services should be provided, and how and by whom services would be provided. Furthermore, the task force examined who should administer the program and how to integrate the program with existing legal services programs and the private bar.<sup>142</sup>

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135. *Millemann Report*, *supra* note 4.

136. *Frase v. Barnhart*, 840 A.2d 114, 138–39 (Md. 2003) (Cathell, J., concurring).

137. *Id.* at 138 (Cathell, J., concurring) (stating that, “unlike many cases of a lesser nature, the [civil Gideon right to counsel] issue will not go away” and will keep coming back to this Court “until four judges of this Court vote to resolve it one way or the other.”); *see also* Stephen Sachs, Address at the University of Maryland Law Journal of Race, Religion, Gender & Class’s Maryland Legal Services Corporation 25th Anniversary Symposium: Recognizing Twenty-Five Years of Accomplishments and Setting an Agenda for the Future (October 11, 2007).

138. 1988 LEGAL SERVICES ACTION PLAN, *supra* note 19, at 24–26.

139. *See* Clare Pastore, *The California Model Statute Task Force*, 40 CLEARINGHOUSE REV. J. POVERTY L. & POL., July–Aug. 2006, at 176.

140. *Id.*

141. *Id.*

142. *Id.*

In November 2006, the California Model Statute Task Force published its report, which included a draft statute and explanatory comments, and promoted a broad scope of services, including legal counsel and pro se assistance by attorneys and paralegals in a comprehensive range of matters, as well as legal representation by attorneys when needed to provide fair and equal justice in litigation.<sup>143</sup> The task force gave considerable attention to the experience in creating and administering board civil right to counsel programs that have existed for many years in numerous other countries.<sup>144</sup> It also proposed that services be provided through a “mixed service delivery system” by nonprofit legal aid organizations and private attorneys, with the division of labor based on comparative specializations of these groups.<sup>145</sup> The proposed California civil legal aid program would be administered by a “State Equal Justice Authority,” an independent public body governed by a nine-person board that consisted of at least five attorneys appointed by the chief judge, governor, state legislature, attorney general, and state bar.<sup>146</sup> At the request of California Governor Arnold Schwarzenegger and urging of California Chief Justice Ronald George, the California General Assembly provided five million dollars in the fiscal year 2008 state budget for the implementation of access to justice pilot projects in three jurisdictions to expand representation to low-income persons in a wide range of civil matters in compliance with the Model Statute Task Force’s recommendations.<sup>147</sup>

The Maryland Access to Justice Commission may also wish to give consideration to the major legal aid changes implemented in recent years in Ontario. The most populous Canadian province, Ontario implemented a major revision of its civil legal aid system in 1998 pursuant to the recommendations of the Ontario Legal Aid Review, established by the Ontario Government in 1996 as an independent task force with a mandate to undertake a comprehensive review of legal aid in the province.<sup>148</sup>

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143. *Id.* at 177–78.

144. *Id.* at 177.

145. *Id.* at 179.

146. *Id.*

147. *See* GOVERNOR’S PROPOSED BUDGET: LEGISLATIVE, JUDICIAL AND EXECUTIVE (2007), available at [http://www.dof.ca.gov/Budget/Budget\\_2007-08/GovernorsBudget\\_2007-08/documents/0010-LJE.pdf](http://www.dof.ca.gov/Budget/Budget_2007-08/GovernorsBudget_2007-08/documents/0010-LJE.pdf) (last visited Mar. 30, 2009).

148. *See generally* ONTARIO LEGAL AID REVIEW, REPORT OF THE ONTARIO LEGAL AID REVIEW: A BLUEPRINT FOR PUBLICLY FUNDED LEGAL SERVICES (1997), available at <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/olar/>. The Ontario Legal Aid Review was chaired by John D. McCamus—then-dean of Osgoode Hall Law School, York

## VI. CONCLUSION

In the face of major challenges over the past twenty-five years, substantial progress has notably expanded and improved Maryland's system for providing legal aid and access to justice for low-income people in civil matters. In cooperation with outstanding judicial leadership, legislative and governmental supporters, legal services providers, the bar, law schools, and others, the MLSC has played a critical role in helping to promote legal services development throughout this period. The state of Maryland has developed the essential components of a high-quality legal aid and access to justice system, while advancing a growing consensus on the state's responsibility to assure access to justice for all its members in essential matters. While much has been accomplished, much remains to be done.

Another article in this publication<sup>149</sup>—Volume 7:2 of the University of Maryland Law Journal of Race, Religion, Gender and Class—describes the next steps currently under review or implementation: IOLTA comparability, development of an expanded Judicare-like private attorney reduced fee program, and other measures. The Maryland Judiciary's establishment of a Maryland Access to Justice Commission will likely provide a forum on why and how to advance legal aid in this state, as well as the possibility of an eventual judicial finding for a civil Gideon right to counsel in certain critical civil matters. We continue to hope and believe that with diligence, good will, and good work, Maryland will be able to proclaim that it has achieved "Equal Access to Justice for All" in the next twenty-five years. Congratulations on the work accomplished, and best wishes on the work to come.

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University, Toronto—upon appointment of the Ontario Minister of Justice. *Id.* Now chair of Legal Aid Ontario, Professor McCamus was luncheon speaker at the University of Maryland Law School's symposium on the Maryland Legal Services Corporation. John D. McCamus, Address at the University of Maryland Law Journal of Race, Religion, Gender & Class's Maryland Legal Services Corporation 25th Anniversary Symposium: Recognizing Twenty-Five Years of Accomplishments and Setting an Agenda for the Future (October 11, 2007).

149. See *Millemann Report*, *supra* note 4.

